ADJUDICATION OF CLAIMS AND APPEALS

HEARING

BEFORE THE

SUBCOMMITTEE ON COMPENSATION, PENSION, AND INSURANCE

OF THE

COMMITTEE ON VETERANS' AFFAIRS HOUSE OF REPRESENTATIVES

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ADJUDICATION OF CLAIMS AND APPEALS

WEDNESDAY, APRIL 21, 1993

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMPENSATION,
PENSION AND INSURANCE,
COMMITTEE ON VETERANS' AFFAIRS,
Washington, DC.

The subcommittee met, pursuant to call, at 9:05 a.m., in room 334, Cannon House Office Building, Hon. Jim Slattery (chairman of the subcommittee), presiding.

Present: Representatives Slattery, Evans, Edwards of Texas, Tejeda, Bilirakis.

OPENING STATEMENT OF CHAIRMAN SLATTERY

Mr. SLATTERY. Good morning, ladies and gentlemen. The subcommittee will come to order.

We are meeting this morning to address the situation which exists today with respect to the processing of veterans' claims. Today's discussion will concern the adjudication of claims and appeals at the regional office level. On May 6th we will conduct a second hearing, the subject of which will be the adjudication of veterans appeals at the Board of Veterans' Appeals level.

Perhaps the most telling statistic as to how serious a problem we have is the number of backlogged cases. Current data shows the backlog as exceeding 500,000, and it is projected that by the end of this fiscal year the backlog will be over 900,000 cases.

Also, it now takes an average of 180 days for the VA to process an original claim for disability compensation. By the end of the year, that time could well be in excess of one year.

Our purpose today is not simply to receive more information about the existence of this problem, but rather to hear from the experts about what the VA and Congress should do to solve it. Historically, the usual recommendations have been to provide increased staffing. While I intend to work towards obtaining additional funding for this purpose, I am doubtful that additional staffing will solve the problem. I am convinced that, with all of the talent and expertise at the disposal of the VA and the veterans' service organizations, practical administrative solutions can perhaps be found and developed so that greater efficiency can be achieved with the same resources.

For example, we are presently exploring legislation suggested by the VA that would eliminate the current requirement that annual income questionnaires be submitted by pension recipients. According to the VA, some 75 percent of pension recipients either have

no outside income or receive Social Security as their only income. If VA were to be relieved of this burden, we are advised that some 240 full-time equivalent positions could be used towards reducing the adjudication backlog.

We are also exploring other legislation suggested by VA affecting decisions by the Board of Veterans' Appeals, but I will defer discussion of those recommendations until our May 6th hearing.

I want to emphasize that I have made the improvement of the adjudication and appeals process my number one priority. I have asked the VA and the service organizations to work together and with committee staff to develop new ideas on how to improve the system. The bottom line is that we must act now to fix what many feel is a broken system. If we do not act quickly, the only result I can foresee is that the delays and backlogs we see today will grow much worse, to the detriment of veterans and their dependents or survivors.

I look forward to hearing from our witnesses today, and also to working with all of you in the next few weeks to develop a proper course of action which should be followed.

Before recognizing our first witnesses today, I was going to recognize our ranking minority member, who I am advised will not be able to participate because of a caucus that they are involved in, but he may be here in a few minutes. So I would at this time recognize other members of the subcommittee if they would like to make opening statements.

The gentleman from Texas is now recognized.

Mr. EDWARDS OF TEXAS. Thank you, Mr. Chairman. Just very briefly, I want to thank you for holding this hearing and for your genuine commitment to solving this problem. Based on having talked to many, many veterans in my district, I know it is a very serious one. Perhaps this isn't the kind of issue that makes headlines, but the lives of those veterans involved or in individual cases it is terribly important. Thank you for your commitment.

Mr. SLATTERY. Thank you, Chet. Lane? The gentleman yields.

The chair at this time would recognize our first witness today, who is the Deputy Under Secretary for Benefits, Mr. John Vogel, who will be accompanied by Mr. Gary Hickman, the Director of the Compensation and Pension Service.

STATEMENT OF R.J. VOGEL, DEPUTY UNDER SECRETARY FOR BENEFITS, DEPARTMENT OF VETERANS AFFAIRS, ACCOMPANIED BY J. GARY HICKMAN, DIRECTOR, COMPENSATION AND PENSION SERVICES

Mr. VOGEL. Good morning, Mr. Chairman. I would like to make a summary statement—a brief statement—and ask that the full statement be made a part of the record.

Mr. Chairman and members of the subcommittee, I am pleased to be here today to discuss challenges the VA is facing in processing veterans' claims and what we are doing to meet those challenges. With me this morning is Mr. J. Gary Hickman, the Director of the Compensation and Pension Service.

Like many organizations today, VA is changing. Increasing requests for assistance, new programs authorized by Congress, and impacts of judicial review are forcing us to reexamine the way we

do business. Because of the recent downsizing in the military, we are seeing an increase in the number of original compensation claims, an increase in the number of issues raised on each claim, and an increased volume of claims made from veterans seeking medical treatment from the VA.

Claims processing has been influenced by three important developments: changes in due process required by the *Semenchuk* court decision; claimant notification provisions of Public Law 101–237, which require a statement of the reasons for adverse decisions and a summary of the evidence; and the Court of Veterans Appeals.

The full impact of judicial review was not apparent at the regional office level until late 1991. It has continued to grow. The court requires that we provide more detailed explanations of our decisions and more assistance to claimants in obtaining evidence. Given VA's finite resources, growing backlogs and additional delays are the results. There is approximately a 2-year gap from the regional office decision to a review by the court, in the event of an appeal through to the Court of Veterans Appeals. A precedent decision must be applied not only prospectively but also to similar pending issues dating back as long as 2 years.

VA is testing a number of ideas to improve timeliness in service. The Army has agreed to test the transfer of veterans' service medical records directly to VA from the military installations where soldiers are separated. A VA Service Medical Records Center has been established to receive those records immediately upon a service member's discharge from active duty.

We now require or have as a standard that VA examinations for disability compensation and pensions be processed within 35 days. Two years ago, it took nearly 60 days, and in October of 1992, it was 34. We are exploring automated office processes to assist in the adjudication process. For example, an automated medical information exchange, it has the acronym AMIE, allows regional offices to communicate with VA hospitals about hospital admissions and discharges and physical examinations. We are currently testing at 5 regional offices an automated system for the control of veterans' records. It is a bar-coding system which allows the claim to be tracked in the process.

A recent study, I will give you some comment on, shows that we consume about 30 percent of our time moving records from one work station to the next. This will help us in identifying where it is and speeding the process along.

We are testing at the Atlanta and New Orleans Regional Offices voice-recognition technology which rating specialists will use to produce rating decisions and other documents by speaking directly into a computer.

The changes in due process procedures and the statutory requirements regarding notifications of decisions have made us increasingly aware of the inadequacy of our computer-generated letters. Therefore, we are designing a new PC-based automated letter system.

We are also testing systems which would make VA regulations and manuals electronically available to claims examiners. VA is actively pursuing ideas to improve work flow methods. The New York Regional Office is participating in an OMB/White House program

to redesign the claims process through a self-directed work team. Under this concept, a highly trained group shares the responsibility for a service or product. The Portland Regional Office has established a VA Service Center combining functions of the Adjudication and Veteran Services Divisions.

Seven other regional offices are participating in similar initiatives. The Indianapolis Regional Office has personnel designated as rating administrative technicians to assist in controlling the work flow of the Rating Boards. Our adjudication officers have an advisory committee which considers and makes recommendations in areas affecting Adjudication Division operations. This year we will hold four adjudication officers conferences, one in each of the VBA areas.

Finally, we are improving the training provided to our decisionmakers and have broadened the scope of our training programs. Our training programs impart consistent information, reduce the drain on local resources, and provide structured training throughout an employee's career.

In conclusion, Mr. Chairman, I would like to reemphasize VA's commitment to all veterans. Our clients are waiting longer for decisions, but the quality of our decisions, our assistance in development, and the explanations of our decisions have never been better. With the initiatives I have discussed, we hope to shorten the delays. We will continue to explore opportunities to improve the entire adjudication process.

We look forward to working with you, and I know of your personal commitment to this, and with the veterans' service organizations in improving our process. I would be very happy to answer any questions you or members of the subcommittee may have.

[The prepared statement of Mr. Vogel appears at p. 37.]

Mr. SLATTERY. Mr. Vogel, I am just curious. With the changes that you are envisioning being able to implement administratively, what kind of a backlog are you looking at dealing with at the end of the year?

Mr. VOGEL. All of the initiatives that we have, Mr. Chairman, have measures on them so that we can determine outcomes. It does no good to undertake initiatives unless you know where you are going and how to measure and know if you ever got there.

I think probably the end of this year would be too soon to see the impact of these testing methods. We are starting to see some hopeful signs. Mr. Hickman and I were discussing yesterday the initiative of the Indianapolis Regional Office. I don't know if we have a statistical aberration, but they have made in a comparatively short time frame, a significant in-road into a backlog. That is one of the initiatives.

We are measuring them as we go, but I don't really see an impact through the end of this fiscal year. I think it is probably too soon. Some of this technology that I described is comparatively—well, it is only being tested in a few areas, the voice recognition thing where you talk into a computer and it produces letters. It is a test. It is expensive to do. We don't think we will really see much through the end of the year. And we are still looking at a backlog of 800-plus thousand cases.

Mr. SLATTERY. Pardon me?

Mr. VOGEL. We are still looking I think at a backlog for the end of this year of somewhere in the neighborhood of 850,000 to 900,000 cases.

Mr. SLATTERY. With all the changes that are you are talking about?

Mr. VOGEL. Yes. Really, they are piloted, and some of them are going to work, some of them might not work. We are going to measure all of them and look at all of them.

Mr. SLATTERY. What kind of a time period are you looking at in terms of being able to adjudicate these claims on average? I mean right now we are looking at 180 days. Do you anticipate that dramatically increasing? Is it going to stabilize? What are you looking at there?

Mr. VOGEL. I think it will creep up some more. If we can cut into the amount of time we will also cut into the number of claims that are pending.

Mr. Hickman might want to comment on that.

Mr. HICKMAN. I think that my comment would be, Mr. Chairman, if we did nothing then we will be looking at at the end of 1994 probably 200 days and 900,000 cases pending. But our hope is with some of the initiatives which will go into play next year changes that we are testing now to implement next year, we should be able to see some turnaround and maybe some erosion of that pending workload. So I think with some changes being made we should see improvement in both of those areas, timeliness and pending workload.

Mr. SLATTERY. What about in the following year? I mean you are telling me that by the end of the next fiscal year, or by the end of this fiscal year, I guess, there will be no improvement. The following year what do you envision?

Mr. VOGEL. I think in the following year we will start seeing it. Towards the middle to the end of the summer we are going to install what we call phase one of modernization, which is a computer-assisted system. That will provide help in the process. I think the time frame is July through September of this year.

One of the things that we are very concerned about as we test various initiatives is we don't and will not tolerate any deterioration of the quality of our products. We would rather do it right and take longer than do it quick and not be satisfied that we have done the right thing for our veterans. We are committed to quality. We don't want to take shortcuts that diminish the quality of the work that we do.

Mr. SLATTERY. A general question that I have is, from your perspective, what kind of legislation is needed to help you?

Mr. VOGEL. There is legislation that I trust will come to the committee asking two things be done; that is, a law—you referred to it earlier—that changes the requirement to send an income questionnaire to all pension and DIC recipients. It would be a change to give VA discretionary authority because we have so many claimants whose income is simply Social Security or nothing.

We match with Social Security, and we are now matching with IRS. The IRS match has an ending date of 1997, the access to the IRS tax information. A piece of the legislative request will be to make the authority to get IRS information permanent.

Those two things will relieve us of the burden of sending income questionnaires to about 700,000 pension recipients, freeing up the personnel to do other decisionmaking work, largely in the compensation area.

Mr. SLATTERY. How much money are we going to be able to save by doing that? I mean instead of sending out these 700,000 income verifications, we have the personnel that will be freed up by handling all that stuff, but in addition to that just postage cost?

Mr. VOGEL. We are going to still send them a notice reminding them they have an obligation to inform the VA of changes in their income because their income affects the amount of pension, so there will be a postage cost in sending those out. There won't be a postage cost borne by the veterans sending something back to us, unless they need to notify us. Nor we will have to process that through our mailrooms and through the Adjudication Divisions and our Veterans Service Divisions.

That is where we think—just in the Adjudication Divisions we will free up 244 personnel, and we haven't yet measured but there has got to be some other impact on the administrative personnel and veterans' services personnel, and frankly veterans' service organizations personnel in handling this.

Mr. SLATTERY. Describe the kind of personnel that are going to be freed up by this change in the agency?

Mr. VOGEL. Largely, these are adjudicators. These are people that make decisions on compensation, pension, education, vocational rehabilitation-type claims.

Mr. SLATTERY. These are adjudicators that are handling all this income verification stuff?

Mr. VOGEL. If there is no change reported, if it just comes back to us with no change, it is processed by clerical personnel. But if it needs adjudicative action, it has to be reviewed by an adjudicator to make sure we did it right. And, if it has any kind of a change involved or inconsistent information that we have got to verify, then you have got veterans' claims examiners or adjudicators looking at it.

Mr. SLATTERY. I will probably have some more questions in a few minutes, but I wanted to give my colleagues an opportunity to ask questions too. So at this time I would recognize the gentleman from Illinois.

Mr. EVANS. Thank you, Mr. Chairman.

Mr. Vogel, first, two questions about the downsizing of the military. Given that the downsizing will probably increase VA's caseload, I wondered if your Department is making any plans to deal with that kind of increased demand on your caseworkers.

Mr. VOGEL. What we are doing, Mr. Evans, is being much more active in assisting veterans through outreach to them on separation. We have two programs, one called the Transition Assistance Program and the other, which is a variation on it, called the Disabled Transition Assistance Program. TAP and DTAP are the acronyms. We like acronyms in government.

We are out at military installations assisting them in the orientation about VA benefits, loan guarantee benefits, insurance, compensation, pension.

We think we have a statutory and, frankly, a moral obligation to help them, and it is yielding more work for us. That is what we are here for, to help our veterans upon separation.

I think we are looking—well, I will give you an example, Mr. Evans. In 1991 we did about 105,000 original compensation claims, and this year we are going to do about 155,000. So the impact is large and we are probably increasing the impact by aggressive outreach.

Mr. EVANS. What do you anticipate in terms of demands on adjudicators as the number of people being discharged increases? I mean, it seems like you are trying to help people become more knowledgeable about what they have to do during the discharge process to protect their rights and build their case. But isn't this going to have more of an impact on backlog in the near future?

Mr. VOGEL. Yes, it will, sir.

Mr. EVANS. The Disabled American Veterans have suggested that we look at that as part of the conversion effort in downsizing. Is there any planning going on for that or any attempt to even look at using conversion funds for the VA?

Mr. VOGEL. No, sir.

Mr. EVANS. VVA raises a problem in this whole area, and I didn't appreciate this even as a member of the Armed Services Committee. They recently stated that the military services have begun to curtail the conduct of physical examinations just prior to discharge from the military.

It may be that legislation might be necessary, but since these discharge physicals are often the last chance that a veteran, or soon-to-be veteran is going to have to build their case. I am very concerned about this lapse. Has this policy had an impact as of yet? I don't know how long this has gone on.

Mr. VOGEL. I don't know either. But that certainly would have a deleterious impact on claims. A good separation physical is all we often need to make an adjudicative decision. We don't have to get a VA examination if we have a good recent discharge examination from the military. We would not want to see that happen.

Mr. HICKMAN. Let me just add a comment. We have had some discussions with DOD regarding that. Our understanding is the Navy does conduct examinations and the Army does not or makes it optional. We have been trying to reach an MOU with them to have all people separating have an examination, as well as have an examination which would be acceptable for us so we would not have to go out and conduct another VA examination.

Mr. EVANS. Do you know what the Air Force and the Marine Corps are doing?

Mr. HICKMAN. My understanding is Navy and Marine Corps are conducting them. The Army and Air Force are not in all situations. Sometimes it is optional with the serviceman or servicewoman leaving service.

Mr. EVANS. So in DTAP and TAP, are you advising them to ask for those examinations at this point?

Mr. HICKMAN. In those situations we usually see an examination, in the DTAP program. Where the individual is not coming out disabled but may have conditions which he has not forewarned the

military about and then subsequently files a claim, those are the ones we are not getting the examinations.

Mr. EVANS. In their testimonies many of the VSOs, but VVA in particular, stated that the adjudication system is set up in a way that permits the regional offices and the Medical Centers to earn work credits rather than fully serve veterans. Would you care to comment on that critique?

Mr. VOGEL. I think that is wrong. I think, in the past—and I am talking about, probably, 6 or 7 years ago—the emphasis was on production of work, not necessarily the quality that we wanted. I think that is an observation on a historical phenomenon.

Mr. HICKMAN. I would say if that was the case today we wouldn't have the pending workload we do have.

Mr. EVANS. Mr. Chairman, I will probably have a few other questions, but I would like to yield back so that my colleagues can have an opportunity to ask questions.

Mr. SLATTERY. Okay. Chet.

Mr. EDWARDS. Thank you, Mr. Chairman. Mr. Vogel, following up on Mr. Evans' question, the Armed Services Subcommittee on Research and Technology is as we speak having hearings, started yesterday and will continue today. If you were to get some extra funding from the transition package of funds coming out of Armed Services, how would the VA use that to deal with the additional workload? If you could be specific?

Mr. VOGEL. My thought is that we would put that into claims examiners and the folks in vocational rehabilitation, but largely in the adjudication process. We would convert those funds into adjudicators. I think that would be the way we would use it.

Mr. EDWARDS. Okay. Thank you very much.

Okay, could you tell me, in regard to regional offices, are they all pretty much following the same procedure in regard to attaching or incorporating decisions on your award letters?

Mr. VOGEL. They are not all following the same procedures. Some of the things that I tried to describe in my testimony were initiatives to improve their processes. We don't want at all, anywhere, any difference in the philosophical approach and the close adherence to the laws that we administer. We don't want free spirits out there on that.

But insofar as processes, as long as it doesn't affect the outcome. We are experimenting with processes, but not the basic adherence to the laws and the regulations.

Mr. EDWARDS. One final question, Mr. Vogel. Are any of your regulations or manual provisions now on line?

Mr. HICKMAN. We do have one station which has CD-ROM and some of the material on line. That has been a test basically of how efficient it would be and the format it would be in. When all that testing is completed, hopefully later this year, we can make some decisions about whether we want to go with CD-ROM nationwide.

One of the drawbacks with CD-ROM is that it is basically updated quarterly or monthly. We have a lot of material which comes out in between, so we are looking for a system by which we can provide information or download it instantaneously as well as have it on a disk. So we are looking at both options.

Mr. EDWARDS. Thank you very much. Thank you, Mr. Chairman.

Mr. SLATTERY. Mr. Tejeda.

Mr. TEJEDA. Thank you, Mr. Chairman. Mr. Vogel, I am curious as to if the adjudication process is averaging approximately 180 days is that also about average or about the same at cities or areas, for example, San Antonio, where there may be hospitals and several bases and the Audie Murphy Veterans Hospital?

Mr. VOGEL. The 180 days is the average on original compensation claims. Those claims are more complex and that is a national average. Some other claims, pension and dependency adjustments, take less time.

But there is some variance. We have some offices that have more trained personnel and fewer trainees producing work faster and quicker. I don't know the specifics of the San Antonio area. That is all handled through the Houston Regional Office. But I can get you an answer for the record or to you personally as the Representative from that area.

Mr. TEJEDA. Just one other question. What is being done about creating a common database on individual veterans' services?

Mr. VOGEL. We have a group working on that. We do have some data exchange between the hospital computer system and the computer system that we use to process benefits. We have information exchanges set up now, but there is a task force working on trying to come up with a single record to take the burden off both the veteran and our personnel in routine processing, such as dependency notices or changes in dependency status which affect benefits, hospitalizations, income information which is needed by VA medical centers in determining eligibility for medical treatment. It started in the fall of last year and is active, and it is an area of very keen interest to the Secretary and to us as well.

Mr. TEJEDA. Thank you, Mr. Chairman.

Mr. SLATTERY. Mr. Vogel, yesterday the Secretary mentioned in his testimony before the committee the possibility of regionalization in the processing of some of these claims. I am just curious what this means. Are you looking at consolidation of Adjudication Divisions? Does this mean closure of regional offices? What are you all looking at?

Mr. VOGEL. Well, we have achieved in the past some efficiency through consolidation in other areas that we are responsible for. For instance, we have two insurance centers for the entire Nation. There used to be quite a number. We have in New England one regional office doing the loan guarantee work for 5 States, and we are looking at the economies of scale in the adjudication processes. No decisions have been made about closing any regional offices. We don't see that.

But we have all of our Montgomery GI Bill cases adjudicated at four processing centers rather than all throughout the country, and that provides some efficiencies and relieves personnel to do compensation and pension at the regional offices. But I think over time, we really have to look at whether we have efficient operations by having 58 regional offices doing all the same work that they used to do in the past. We probably will see some functional consolidation early on.

Mr. SLATTERY. So right now we have 58 regional offices doing this work. Is that what you are telling me?

Mr. VOGEL. Yes, sir. Some of them are rather large, like St. Petersburg, FL.

Mr. SLATTERY. Pardon me?

Mr. VOGEL. Some are very large, like St. Petersburg, FL, and Los Angeles, CA, and some are very small, like Anchorage, AK.

Mr. SLATTERY. Talk to me about some of the real small ones that might need to be looked at.

Mr. VOGEL. Well, there is any number of them. They have 16 or 18 people in the entire adjudication process and theri quality is quite good. But it makes them very, I guess the best word is, fragile. If they lose a couple of personnel, have somebody go out on extended sick leave, then the processes break down and we wind up moving work to other offices, or sometimes moving personnel to that office. They are hard to hold on to. They are fragile. They can break down. The quality we think is quite good but we extract a big price.

Mr. SLATTERY. Do you have someone really looking at this whole process to determine whether we can better serve the veterans if there are some consolidations here in these offices? Or what is going on there? I know that this is sort of a tender area that we are treading into.

Mr. VOGEL. It is, indeed. I have been back just a little over 2 months on a detail, as you know, Mr. Chairman, and I haven't undertaken to have anybody look at that yet.

Mr. SLATTERY. Do you think we should?

Mr. VOGEL. Oh, yes, I think we should. I think we always have to explore ways that will improve the work that we do for our veterans. I think it is incumbent upon us, number one, as Federal managers—well, number two as Federal managers. Number one as advocates for veterans.

Mr. SLATTERY. Mr. Vogel, it appears that a major bottleneck in regional offices is in the Rating Boards. What steps are you taking to free up these Rating Boards from having to develop cases?

Mr. VOGEL. We are putting virtually all of the additional resources that we can free up through job engineering and what not into that decisionmaking process in the Rating Boards. We have rating technicians at a lower grade who can prepare work for the fully trained rating specialists or can produce some of the less complex cases.

But virtually every regional office is under instructions to continually try to get more decisionmakers over into the rating function. Over time we have increased by a small percentage the number of people in there, but don't simply have the human resources to put much more into that.

Mr. Hickman, would you like to comment on that?

Mr. HICKMAN. Just an additional comment. Certainly with modernization, we are trying to develop a modernized system which would help people at the regional office develop the claim more fully, thereby when the claim does go to the Rating Board it will be ready to be rated and a decision rendered without having to go through a piecemeal process.

Mr. SLATTERY. One of the suggestions I have heard is that we ought to utilize the telephone more in the developing of our claims. Apparently any time there is a question that is not answered prop-

erly or just been left blank the claimant will several weeks later get a piece of mail and there may be a month delay time between the time that veteran actually gets the letter and the time that he sends it back or something.

I am just curious. Should we explore and are you exploring the possibility of utilizing the phone in dealing with a lot of these claimants?

Mr. VOGEL. We are using that more and more, and we are using fax capability as well, just the same as it is if we get an inquiry from a Member of Congress about a particular veteran. We would much sooner pick the telephone up and call the local office or the Washington office and provide an answer. It saves a lot of time, a lot of human resources, and we are doing that with our veterans to try to speed up the communications process.

Mr. HICKMAN. Just to add to what Mr. Vogel said, certainly at the Portland Regional Office, through our little test going on there and the test that will be going on in New York, we are bringing veterans' benefits counselors into a unit with the adjudicators and rating specialists, and those individuals try to learn each other's jobs and one of their jobs is to make telephone calls and try to elicit information rather than using mail.

Another item which we are testing in the Phoenix Regional Office, for example, is when a veteran does walk in with an application, an original claim, he sits down with an adjudicator and a counselor and they go over the application with him trying to find out what information he can bring back and what information we need to go out for, and together we work with the veteran and try and get that information as soon as possible.

Mr. SLATTERY. Mr. Vogel, some veterans have already raised concerns about the adequacy of medical examinations, citing the requirement for a 35-day turnaround with VHA. Do you have in place any mechanism to monitor the quality of these exams now?

Mr. VOGEL. Every examination done for the purpose of compensation and pension is reviewed at the VA Medical Center to determine whether it is adequate for rating. I don't know that we are going far enough with that. Adequate for rating and high quality, there is going to be a gap in there.

Mr. Hickman and I have had some discussions with the adjudication officers' advisory group to work on the quality of the products. We want our decision to be of such quality that if the veteran is not fully satisfied, and he disagrees, he can go right through the appellate process and not wind up as a remand or some case that comes back for a better examination or a different look at things.

One of the things we do with the automated medical information system, and this will be applied nationally, is give the physician instructions on exactly what kind of exam he needs to conduct to satisfy our requirements to be able to adjudicate the claim, sort of trying to keep people from messing up.

That system, is that on a test basis, Mr. Hickman?

Mr. HICKMAN. No, that is there now. One of the things that we have noted is that the guide for physicians is dated, I think the last version was 1985, so we are working with the Veterans' Health Administration to update that physicians' guide, explaining to physicians how to make an examination and what information we need

in order to make a good rating. So we are actively pursuing with them that issue, and hopefully by the end of the year, they will come out with a new guide and that guide will be incorporated with the AMIE system so that when an exam request is made, the request goes to the physician and the instructions are there for the physician to follow.

Mr. SLATTERY. I am advised that currently about 50 percent of the cases that come before the Board of Veterans' Appeals are remanded for further development, and I am just curious. Is this something that is relatively recent? Is this percentage much higher since the establishment of COVA?

Mr. VOGEL. Mr. Chairman, it is about two times what it was pre-COVA. It is the impact of the court on the whole process.

Mr. SLATTERY. Do you anticipate that over the next year or so that that remand rate is going to dramatically reduce, or what do you all envision will happen with that?

Mr. HICKMAN. I think that one of the reasons for the remand rate being high is the fact that at the time we make our decision at the regional office a lot of time elapses, a year to 2 years, before the board makes it decision, and a lot of interim COVA decisions have come down, forcing the board to remand because instructions and guidance is different. If the court rulings stabilize, and the time it takes us to work our cases and the time it takes the board to work its cases stabilizes and comes down a little bit, then we shouldn't see as many remands.

The main reason for remands is a change in the rules, as well as examinations being old. Those are the two primary reasons for remands to us.

Mr. SLATTERY. One last question. Then I will recognize minority counsel for any questions they might have for the record.

The test being conducted by the VA and the Army providing for the immediate transfer of service medical records upon separation is something I think is very encouraging, and I am just wondering when can we expect the Air Force, the Navy and the Marines to follow the example of the Army.

Mr. VOGEL. We are working with them—we tell them that we tested it with the Army and we think it is working and they should get aboard. I expect that we will have that done in fairly short order.

Mr. SLATTERY. Yes. No legislation is needed?

Mr. VOGEL. No, that can be done administratively. And that is an issue that has been discussed with Secretary Brown, and if it is necessary he will intervene. But I think we can work that out with the respective service department.

Mr. SLATTERY. Okay. Did you have another question? The gentleman from Illinois.

Mr. EVANS. Thank you, Mr. Chairman.

Mr. Vogel, I understand that on November 2, 1992, there was a judicial review conference call involving all VA regional offices by officials of the VA, the VBA, and the Board of Veterans' Appeals in which all VA adjudicators were instructed not to accept or to consider claims for revision and previous BVA decisions based on clear and unmistakable error. Did that conference call take place?

Mr. VOGEL. There was a communication in the field. I don't exactly know how it was accomplished. I guess it was a conference call that stemmed from a decision of the court that the VA is prepared to appeal to the U.S. Circuit Court. The decision of the court was that——

Mr. EVANS. Well, were people told not to accept or consider claims for revision and previous BVA decisions based on clear and unmistakable error? And further, were they told to inform veterans not to file claims on the basis of clear and unmistakable error but to instead file a motion for reconsideration? And were they further instructed not to give out any information about procedural or appellate rights within that context to the claimants that they were dealing with?

Mr. HICKMAN. We can provide it and look at the transcript. I can't recall all those instances. But generally, what we told them is that if a BVA decision had intervened then we do not expect the regional offices to have the authority to overturn a BVA decision. That should remain with the BVA and not with the regional office.

Mr. EVANS. Well, we would appreciate it if you could make the transcript a part of the record. That would be very helpful.

I would, once it is submitted, Mr. Chairman, ask for its inclusion into the record of the hearing.

Mr. SLATTERY. Without objection, yes.

[The information follows:]

The instructions from the November 2, 1992 conference call were amended in our Judicial Review conference call of May 6, 1993. Copies of the transcripts from both conference calls are provided.

(See p. 44.)

Mr. EVANS. I yield back on that point.

Mr. SLATTERY. Okay. Does minority counsel have any questions they would like to enter into the record?

Ms. FORREST. I would just like to submit them for the record.

Mr. SLATTERY. Without objection, yes, that is what we will do.

Any other questions of the panelists?

[No response.]

Mr. SLATTERY. Okay. Thank you, Mr. Vogel and Mr. Hickman. We appreciate it.

Mr. VOGEL. Thank you, Mr. Chairman.

Mr. SLATTERY. On the next panel we have Mr. Bob Manhan, who is the Assistant Director of the National legislative Service, and Mr. Bob Collins, VFW Field Representative, both with the Veterans of Foreign Wars; and Mr. Michael Brinck, National Legislative Director of AMVETS; and Mr. Paul Egan, Executive Director of the Vietnam Veterans of America.

Gentlemen, welcome. We always appreciate your participation with this committee, and we enjoy working with you, and we welcome your comments today. I have had a chance to visit with most of you already and share with you some of my concerns and priorities, and I would like to give you all an opportunity to make any opening statements you would like to make, and tell us how we can solve this problem and make this problem go away. Okay?

Who is first? Who wants to go first?

Mr. MANHAN. Mr. Slattery, the VFW will start off.

Mr. SLATTERY. Okay

STATEMENTS OF BOB MANHAN, ASSISTANT DIRECTOR, NATIONAL LEGISLATIVE SERVICE, VETERANS OF FOREIGN WARS, ACCOMPANIED BY BOB COLLINS, FIELD REPRESENTATIVE, VETERANS OF FOREIGN WARS; MICHAEL F. BRINCK, NATIONAL LEGISLATIVE DIRECTOR, AMVETS; PAUL S. EGAN, EXECUTIVE DIRECTOR, VIETNAM VETERANS OF AMERICA

STATEMENT OF BOB MANHAN

Mr. MANHAN. Thank you very much for inviting us here this morning. I know that our 5-page statement will be part of the record.

Mr. SLATTERY. Highlight it, if you would, in your opening statements, and then we can probe that in questions, if we need to.

Mr. MANHAN. Yes, sir. I am going to break down my 5-minute summary into, first of all, why the VFW believes that the quality and the timeliness of decisions being turned out by the ROs have deteriorated. Then we are going to touch on some VFW recommendations.

First of all, it has been our experience during the first half of this fiscal year that the RO is taking approximately one year to turn back a response to us, and this is a general statement on all types of claims—burial benefits, educational entitlements, as well as compensation and pension claims. I say this despite the fact that we have heard both Mr. Vogel and Mr. Hickman refer to a 6-month turnaround time for just compensation and pension cases. So this is about 3 months longer in time than in fiscal year 1992. I wanted to make that point. It is taking about 90 days longer for our service offices to get a response back now compared to 1 year ago.

Regarding the quality of the decisions being rendered, we believe it has deteriorated based primarily on the summarization of the fiscal year 1992 statistics we were able to get from the Board of Veterans' Appeals. Last year, fiscal year 1992, a total of 33,000 veterans or claimants appealed decisions from the RO. Of that 33,000—100 percent—half of them were returned or remanded, as Mr. Hickman touched on, because there just was not enough material, factual evidence in the case for the RO to make any kind of a decision; good or bad.

The remaining 16 percent of the cases were reversed at the Board of Veterans' Appeals. In other words, 5,000 cases that were denied throughout the RO system, some 58 different stations, were erroneously decided against veterans, his dependents, and for their widows. The BVA reversed the decision, allowed the benefit, and then returned the case to the respective ROs to grant the award, as entitlement being sought.

The remaining 33 percent of the cases—this is some 11,000 out of the 33,000 we started with—were upheld by the Board of Veterans' Appeals as saying the respective ROs did a good job, the cases were well developed, and the decisions rendered, all denials, were correct. Therefore we summarize by saying that the quality has deteriorated despite the fact it is taking 90 days longer to get a decision.

The VFW realizes that there are two overriding factors that have been working against BVA over many years. For several years, they have lost a number of employees, and also there is an impact

on the BVA and the RO's decisions by the Court of Veterans Appeals.

The VFW has three recommendations to help improve the case backlog problem. First, we suggest that the VBA personnel in the Central Office consider targeting overtime pay at selective ROs where they see that more money thrown at their skilled staff can help break through their respective backlog of cases.

Second, VBA headquarters may want to realign from time to time at any given station all VBA employees, to work only on claims cases, particularly those claims cases that are creating a backlog or a bottleneck for any given period of time.

The third suggestion we have is that perhaps the most skilled VBA people who work right here in Washington, DC headquarters might want to team themselves up, based on their given expertise, and go out to certain selected stations and give what the VFW terms "pinpoint" training. In other words, if the VBA leadership knows that a certain station is having problems or are weak in interpreting the rating skills, then have the experts who know that subject go out to the RO and show them how to do it. If they have people at another station that just don't know how to write disability awards, send out the experts on that subject and offer on-the-job training.

All of these are Band-Aid or quick fixes, Mr. Chairman, but we hope to be of some assistance. This summarizes our statement. Thank you very much.

Mr. SLATTERY. Thank you, Mr. Manhan.

[The prepared statement of Mr. Manhan appears at p. 77.]

Mr. SLATTERY. Mr. Collins? I am sorry. You all are together there.

Mr. COLLINS. Yes, we are.

Mr. SLATTERY. I assume you have nothing to add to Mr. Manhan's statement.

Mr. COLLINS. Well, I just had a few things, Mr. Chairman, pertaining to the timeliness and the quality. The timeliness itself is quite terrible at this moment. I have been visiting regional offices almost every month. Last week I was in one regional office where it is taking 264 days for the processsing of original compensation claims.

The overall quality of rating board decisions is quite poor. During fiscal 1992 the reversal rate by the Hearing Officers at the regional office level was 33.5 percent. One of every 3 cases had been rated incorrectly, which totals up to 5,896 erroneous decisions at the regional office level. And these are only the ones which have been appealed. We don't have any idea how many have not been appealed. And then, as Mr. Manhan said, when it gets to the Board of Veterans' Appeals another 5,000 cases are reversed.

When I worked at BVA 5 or 6 years ago the remand rate was approximately 22 percent. It is now 52 percent. Part of it, yes, is COVA, but a whole lot of it is inadequate development at the regional office level before it gets to BVA.

I don't know what the answer is other than an infusion of additional staffing. I don't see how you can get around it. Overtime is fine, as Bob said, but it is a Band-Aid approach. I see the need for a minimum of 800 to 1,000 additional bodies, depending upon the

size of the station and the level of the position that you are filling. There is a desperate need in adjudication right now. They are really hurting out there.

Thank you.

Mr. SLATTERY. Okay. Thank you, Mr. Collins.

Mr. SLATTERY. Mr. Brinck.

STATEMENT OF MICHAEL F. BRINCK

Mr. BRINCK. Good morning, Mr. Chairman. Thank you for the opportunity to testify on improving compensation and pension. Sitting here listening, I wish I was the Lone Ranger. I would have had a silver bullet to leave with the committee to fix this. Obviously, that is not going to happen, though.

Perhaps the single most recommendation in this year's IB is the increase of over FTEE for VBA. Simply put, there is no other way to significantly and rapidly reduce the backlog in claims. Moreover, this is a prime example of the need to fund the cost of delivering benefits, including personnel, from mandatory spending accounts.

The easy answer is more people and more money, but there are also management actions to augment some of the more obvious fixes. A TQM approach to system design would let the VA work smarter, not harder. First, the adjudication process should be viewed as a production system that uses resources to produce a quality product, and it is great to hear Mr. Vogel use the "quality" word in many instances. In this case the final product is a decision that accurately awards or denies benefits.

A systems engineer would design a system, put it into operation, stress it to identify its weakest component, fix that component, and then repeat the cycle. Within the VBA, as we have heard, the RO is the weakest component of the system. Because of the increasing complexity of the adjudication process, VA estimates that it will take about 2 years to become a fully qualified adjudicator. The system's designer then must lay out a personnel program that addresses the complexity and assigns a grade sufficient to attract well-educated and educable personnel to fill the positions. The personnel structure must reflect an opportunity to advance and not encourage transfer to other areas.

Training programs must be designed to accommodate new hires as well as recurrent training for current employees. Supervision of new personnel is especially critical, and supervisors must be held accountable for the progress of those under their guidance. To increase the focus on quality, AMVETS suggests universal testing similar to that employed by the military to identify those personnel who excel in the intricacies of adjudication and who merit promotion based on their technical knowledge, quality and quantity of work, as well as leadership and management abilities.

VA must also develop performance standards that reward quality as well as quantity of work, and redefine the standards by which cases are tracked through the system to accurately reflect total adjudication times. VA must cease judging production on the mere movement of a claim from one desk to another.

To shorten the adjudication process, office automation must be designed to allow VBA computers to interface with VHA computers to access all relevant records in a veteran's file. On-line computer-

ized help for adjudicators similar to those found in commercial computer programs would offer a way to keep adjudicators up-to-date on changes in regulations due to the latest decisions by COVA, management or legislation. The on-line help system should provide an index of adjudication topics and complete explanations and guidance, and if implemented properly, all adjudication staff would have instant access to the most recent information needed to process claims accurately. This would also increase productivity by eliminating the thousands of hours spent manually posting regulations changes and would assure a standardized reference material library.

Emerging artificial intelligence technologies also offer large productivity improvements. AMVETS agrees with some form of administrative triage to screen the more difficult cases from the relatively easy decisions and would allow VA to apply the minimum resources needed to a case and could consolidate or could integrate the caseload into the training process. The VA must also do a thorough analysis of its information requirements to determine the absolute minimum data needed to make a decision.

Using adjudicative personnel in some type of split shift configuration, with half the division reporting 4 hours early, the other half 2 hours late or after the normal start-up time, would provide about 6 hours of uninterrupted productivity. Also of interest would be using recently retired, knowledgeable adjudicators on a contract basis. A further option would be to contract with a professional services firm to provide specialists to assist in the adjudication similar to the way DOD contracts for help with procurement programs.

We are sure that proper recruiting, training, automation, reasonable accommodations, adjusted office hours, contract with retirees and professional services firms all offer ways to reduce the size of the backlog. Other agencies can help too. AMVETS applauds the Army's decision to send medical records directly to the VA, and we urge the Congress to mandate similar actions by other services if the administrative procedures described by Mr. Vogel don't happen.

It also makes no sense to return a faulty product to the beginning of the assembly line to correct the defect. If at all possible, the defect should be fixed on the spot, and save the administrative costs and time of transferring the product between BVA and VBA. I think Mr. Vogel said a third of their time is lost doing that.

In closing, Mr. Chairman, there is a crisis in the timely delivery of benefits, and it is time for bold and decisive action. We ask the committee to consider the recommendations contained in the 1994 Independent Budget and the ideas presented here as a reasonable common sense approaches that can help solve the adjudication process.

That concludes my statement.

Mr. SLATTERY. Thank you, Mr. Brinck.

[The prepared statement of Mr. Brinck appears at p. 80.]

Mr. SLATTERY. Mr. Egan.

STATEMENT OF PAUL S. EGAN

Mr. EGAN. Thank you, Mr. Chairman. In VA adjudications I think it is fairly safe to say that there are two principal objectives.

Both of them are important. Neither one are being accomplished at the present time. Those are timeliness of decisions and quality of decisions. Even in the best of all possible worlds, those two objectives can be somewhat contradictory.

However, under the circumstances we know certainly that adjudicators in the Department of Veterans Benefits have been thinned over the last many years, beginning in the 1980s through retirements of the World War II generation and others that just left out of frustration because they weren't permitted to do quality work.

But there is an additional thing here in adjudications that also acts at cross purposes with both timeliness and quality, and it is the way in which VA regional office managers measure the performance of their employees. In fact, when we talk about timeliness it means different things to different people.

I want to give you an example of a hypothetical claim and trace it through its various stages before it is ultimately finally decided, so that you can see that what VA adjudicators and their managers consider timeliness is not entirely the same thing as timeliness from the veterans perspective. In fact, it is quite different from timeliness as far as the veteran is concerned.

Let's suppose, for example, that in January of 1990, a veteran files a claim with a regional office for post-traumatic stress disorder. I am not sure if the various stages of this example comply with what we just heard from VA about current delays in decision-making by the regional office people, but suffice it to say, it's a close approximation. In April of 1990, the claim is denied because the case wasn't sufficiently developed. For adjudicative purposes, the individual having denied that claim earns one work credit.

In June of 1990, the veteran files a substantive appeal and a regional office prepares a statement of the case. A second work credit is earned by the adjudicator. In April of 1991, the BVA remands the claim because it was inadequately developed. The decision to remand earns a third work credit. July of 1991, regional office develops the claim, denies it, and prepares another supplemental statement of the case. A fourth work credit is earned.

In January of 1992, the BVA remands the claim again due to outdated medical evidence. The decision to remand once again earns a fifth work credit. April 1992, the regional office requests a new medical exam from the VA Medical Center. As far as the VA Medical Center is concerned, if they do the exam—get it scheduled and do it within 35 days, the VAMC claims a sixth work credit. In June 1992, the regional office issues another supplemental statement of the case, denying the claim based on the new medical information. That action earns a seventh work credit.

And then finally in March of 1993, the Board of Veterans' Appeals issues a final decision on a fully developed claim. Whether it is an allowance or denial is irrelevant. That decision earns and eighth work credit.

Now, eight—essentially eight decisions have earned eight work credits. But in essence, for the veteran only one final decision is really all that is relevant. I would ask if it doesn't make more sense to develop these claims fully and completely in the first place, rather than going through all this paper shuffling which ultimately in this example caused a delay from January of 1990 until March of

1993. When we talk about timeliness, I hope we are talking about the speed of development of a claim and a decision that is based on the quality of the claim, rather than the speed of the regional office adjudicators in making decisions that don't have any effect in getting the claim ultimately decided.

What we have going here is essentially VA adjudicators prompted by management measurement criteria who are essentially filing claims for work credit instead of taking care of the veterans who are filing claims for benefits. I don't know how legislatively you fix this, but it has got to be fixed. I am sure some would say trying to do so would constitute micromanagement. But something has got to be done because what is currently in place is skewing what we are all after, which is timeliness and quality.

Another problem is VA medical centers responsible for conducting rating exams that are overworked. In fact, what happens when stations are overworked is they develop creative ways of meeting their performance requirements. In our testimony we cite five examples of the way in which VA medical centers essentially get work credit, but exams don't get done.

We would suggest under the circumstances, given the volume of requests for medical exams, that if a veteran's private medical records are sufficient to permit the adjudicator to decide the claim, then those records ought to be permitted, rather than requiring in every case that a physical exam or other kind of exam be done by the VA medical center.

So I think, in summary, Mr. Chairman, what is needed is better coordination between the regional office, the BVA and the VA Medical Centers or anybody else that has got a supportive role to play in adjudications. I don't know how you legislate that either, but it needs to be looked at carefully.

Something needs to be done about the management systems that are used that have become suddenly more important than thoroughly and properly deciding claims. Allowance of non-VA medical exams for rating purposes is one important step, and certainly ongoing training for the ranks of adjudicators who in many respects are already too thin and too inexperienced is another. And finally, it is important from the veteran's standpoint, particularly the recently discharged veteran, that we find a way to legislate a requirement that DOD in every case perform some sort of an exit physical so that the veteran can get on the record any problems that they might have developed while in the military service.

Thank you.

[The prepared statement of Mr. Egan appears at p. 85.]

Mr. SLATTERY. Mr. Egan, are you telling me that from your perspective the current system is where employees of the Department of Veterans Affairs are actually given credit basically every time they touch a file?

Mr. EGAN. Every time they issue some sort of decision, develop some sort of decision. Yes, that is right.

Mr. SLATTERY. And you believe that that system almost builds in an incentive to keep that file moving back over that person's desk then?

Mr. EGAN. It is not that it is an incentive to keep from making a decision, but it is an incentive that works at cross purposes from

thoroughly and qualitatively developing the claim. That is the problem.

I would submit to you, Mr. Chairman, that as long as the system like this is in place, and this is the system that we are given when we ask for some measure of productivity, we really don't have any idea what kind of resources or what kind of personnel are going to be needed either in the VAMCs or the regional office to get done what we expect to get done. Because what we have got is a system that measures production but that doesn't really give you a qualitative idea of what it is that is really going on and what it is going to take to get claims properly, thoroughly and qualitatively developed and decided.

Mr. SLATTERY. You know it is my understanding that this whole process was developed as a way of trying to document the need for these personnel to OMB and to the Appropriations Committees so they have a way of really measuring what some of these people are doing.

Mr. EGAN. There is a more cynical way of looking at it. If you are the typical veteran and you file a claim at the regional office and it is turned down, you are probably not going to pursue it any further. So the question is how many veterans have basically given up on their claims just because of the paper shuffling? There are probably significant savings to VA in entitlements not paid.

What is needed instead is some sort of incentive system that gives managers an opportunity to measure performance by their adjudicators. But perhaps the measures ought to be imposed upon the managers themselves. If their adjudicators have remands in excess of, let's say, 10 percent, those managers ought to be somehow penalized and somehow rewarded if overall their regional office remands are less than 10 percent.

Finding ways to provide incentives to get meaningful work done and give us a meaningful measure, or at least provides an incentive for quality work to be done. That is not the case now.

Mr. SLATTERY. Mr. Brinck, Mr. Collins, and Mr. Manhan, do you agree with this assessment? I am just curious what the other service organizations think about this whole internal process.

Mr. BRINCK. Not addressing whether it is a cynical approach or not, but I tried to allude to that in the suggestion that a TQM approach—you know under TQM you give your worker the tools and the training to do the job correctly, and then you occasionally check to make sure that that production is within standards. And if not, you figure out why it is not and you fix it at the lowest level.

It is not by adding more and more levels of review that you produce a quality product in the quantity that it is needed. What you do is you train the production line person well enough to produce the quality product the first time around. In naval aviation we had a saying, two sayings: Quantity has a quality all of its own, and quality has a quantity all of its own. It seems trite but it is absolutely true. And whether you are fixing an airplane or putting a car together or putting a benefits case together, the principles of quality production are exactly the same.

Mr. SLATTERY. Do the gentleman from Texas have any questions of this panel?

Mr. EDWARDS. Just one, Mr. Chairman. Thinking back on a question raised by Mr. Evans, clearly throwing money at the problem isn't going to necessarily solve it, but without doubt additional resources, even savings within VA programs or other areas, could help us be able to deal with some of the backlog, and perhaps even the quality problems.

Do you think that if it were possible, and I am not saying it is, but if it were possible, if several members of this committee that are on the Armed Services Committee would work to see if any of the military transition money could be put into addressing some of these concerns, that the veterans' service organizations would politically get behind that effort and put some support behind that to give us some momentum to get that passed?

Mr. EGAN. Speaking for Vietnam Veterans of America, Mr. Edwards, we would certainly be interested in supporting a proposal of that nature. I would submit to you, however, that we don't know—I mean it seems as if we can't know how much money or personnel resources are going to be needed to give us what we expect until we know based on actual volume of demand and actual assessments of what it really takes to get a claim genuinely and thoroughly decided, we just don't know how much it is going to take.

Mr. EDWARDS. Thank you, Mr. Chairman.

Mr. SLATTERY. Mr. Tejeda, do you have any questions?

Mr. TEJEDA. You know certainly 6 months to a year is totally unacceptable and it shouldn't be that way, and the VA needs to make improvements. But what—and I know it will vary from case to case depending upon the severity or the complications, but what would be the ideal, or what is a reasonable amount of time? How would we like to see it cut down? I know some, perhaps, need to move more expeditiously because of the nature or family, but what would be a reasonable amount of time?

Mr. EGAN. It is a tough question to answer.

Mr. TEJEDA. But in general terms. I mean I know it will vary from case to case.

Mr. EGAN. First of all, if it is taking 6 months to get a decision out of a regional office office now, is it getting a decision that is going to deny the claim because the claim was improperly or insufficiently developed? That is number one. We don't know how much time it would take to get a claim properly and thoroughly adjudicated with a record being complete. Certainly it shouldn't take any more than 6 months to get a decision. It certainly ought to be quicker than that.

I know Mr. Slattery's idea of formulating some sort of a triage system to get those claims that are essentially "no-brainers" out of the way as quickly as possible is probably one way to go. But there is a whole variety of variations in the complexity of different kinds of claims.

Mr. MANHAN. If you absolutely wanted a figure, Mr. Tejeda, I would say 6 months. We always hear the 180 days. That is a nice reasonable figure to settle on from the VFW's viewpoint.

Mr. TEJEDA. Now, we are talking about coming back with a decision, not just the initial processing to get it towards a decision.

Mr. MANHAN. Yes. I thought that was what I was responding to. The claimant puts in a claim. Average time 6 months, he gets an approval or a denial on his request for an entitlement.

Mr. BRINCK. AMVETS would concur with that.

Mr. TEJEDA. Thank you very much, Mr. Chairman.

Mr. SLATTERY. So you all agree basically that if we were really able to achieve a 6-month time frame for finality in these cases that would be reasonable?

Mr. EGAN. Again, we have got to know what it really takes for what kinds of claims. Right now we have a system that is skewed by a management measurement system that is probably as much of a reason for the 52–53 percent of the remands from BVA as the two reasons that were given by Mr. Hickman earlier, those being old medical examinations and changed rules.

Until we know how much time it takes to fully develop a claim and make a decision on it, it is just not possible to guess.

Mr. SLATTERY. Let me ask each of you, should we or should the VA be looking at consolidating certain adjudication divisions? If contact points were retained in the 58 regional office, is there a need for 58 adjudication divisions, in your opinion? What do you think?

I hate to throw such a hand grenade into your lap there.

Mr. EGAN. Having the availability of VA regional office as many places where people are is certainly desirable. There may be economies of scale—

Mr. SLATTERY. We are not talking about offices, I want to make that clear. I am talking about just the actual, you know, adjudication divisions out there, whether they need to be there, whether there should be a consolidation of those adjudication divisions. And we are not talking about closing regional office, just consolidating some of the adjudication divisions.

Mr. EGAN. Well, historically—let me respond by citing the example of when the VA decided to consolidate the home loan guarantee operations in the New England area into one area. That was when the economy in New England was booming and it wasn't really believed that there was all that much need for the concentration of personnel in New England. But, as we all know, in the last several years New England, its economy has gone, essentially, belly up with certainly large numbers of foreclosures and other related problems that need some attention by a home loan guarantee operation. So the decision to consolidate that particular function in New England into one office or one division might have sounded good when it was done, but it didn't necessarily work out that way when the economy turned around.

Mr. SLATTERY. What do the rest of you think? Mr. Brinck.

Mr. BRINCK. I think in the portion of the process that requires contact with the claimant every effort should be made to keep as many sites for, for lack of a better term an outreach point that they can deal with this person face to face if need be. The actual adjudication, you know, the technical process, if some consolidation would provide large economies of scale, that would certainly be—if it is going to work, sure.

Mr. SLATTERY. Okay. Mr. Manhan.

Mr. MANHAN. Generally speaking, Mr. Chairman, the VFW would agree with the AMVETS position. Ideally, we would like to have regional office where the bulk of the veteran population is. We cannot expect every veteran to have a regional office within 50 miles of where he lives. But, for example, the Washington, DC Regional Office, which may or may not be a problem could be an example of what Mr. Brinck suggests while the case adjudication could be divided in half with some of the functions going to Baltimore, Maryland Regional Office and the remainder going south to the Roanoke Regional Office. This is not to eliminate an RO, but to streamline or resolve one potential bottleneck problem in the claims processing system.

Mr. SLATTERY. One last question. I am just curious. Have you all had an opportunity to chat since our visit several weeks ago, and to just sit down and do some brainstorming about this issue? I am just curious. Has there been any follow-up since our meeting?

Mr. EGAN. I know that my organization has attempted to put together a meeting sort of replicating the meeting that we all had in your office, and scheduling problems just made it impossible to finally put it together.

Mr. SLATTERY. I really want to encourage you all again to spend some time together, if you can, talking about this, and come to some closure about what you all think from your perspective can and should be done. Try and get that to us, if you can, in the next couple of weeks. Is that unreasonable? Okay.

I don't have any further questions. Thank you very much. Appreciate your time today.

Mr. SLATTERY. I would like to welcome now as the next panel Mr. Philip Wilkerson, who is Assistant Director of the National Veterans Affairs and Rehabilitation Commission, and Mr. Carroll Williams, Assistant Director for Operations, Veterans Affairs and Rehabilitation Commissions, the American Legion; and Mr. Richard Schultz, Assistant Legislative Director for the Disabled American Veterans; and I would also like to recognize Mr. Frank DeGeorge, who is the Associate Legislative Director of Paralyzed Veterans of America.

Frank, I am advised that this will be your last appearance before this committee testifying, and, as chairman of the subcommittee, I would just like to recognize and acknowledge your 20 years of advocacy on the part of veterans. You have done a great job, and veterans all across this country are grateful for your dedicated service. So welcome, Frank. It is great to have you here today.

I am advised by John Brizzi, sitting next to me, that you have served two generations of Brizzi's that have staffed this committee and the Senate committee. So again, a special welcome to you, Frank. I am sure I can speak for all the members of this committee in wishing you all the best in the days ahead. So welcome.

Mr. DEGEORGE. Thank you, Mr. Chairman.

Mr. SLATTERY. Why don't we start off with you, Frank.

Mr. DEGEORGE. If I could have just a moment without the clock?

Mr. SLATTERY. Pardon me?

Mr. DEGEORGE. If I could have a moment without the clock.

Mr. SLATTERY. Okay.

Mr. DEGEORGE. Thank you for your comments about my service to Paralyzed Veterans of America. But what is most important and what I pride myself on is not only the people that I have met in the course of that activity, but representing truly the veteran, him or herself, members of our organization as well as on many occasions all veterans. That truly is a privilege, and thank you.

As far as the Brizzi's go, the son is as good as the father.

Mr. SLATTERY. John keeps telling me that, so I will have to take your word for that.

Mr. DEGEORGE. Being Italian, I can say that.

STATEMENTS OF FRANK R. DEGEORGE, ASSOCIATE LEGISLATIVE DIRECTOR, PARALYZED VETERANS OF AMERICA; PHILIP R. WILKERSON, ASSISTANT DIRECTOR, NATIONAL VETERANS AFFAIRS AND REHABILITATION COMMISSION, THE AMERICAN LEGION, ACCOMPANIED BY CARROLL WILLIAMS, ASSISTANT DIRECTOR FOR OPERATIONS, VETERANS AFFAIRS AND REHABILITATION COMMISSION, THE AMERICAN LEGION; AND RICHARD F. SCHULTZ, ASSISTANT NATIONAL LEGISLATIVE DIRECTOR, DISABLED AMERICAN VETERANS

STATEMENT OF FRANK R. DEGEORGE

Mr. DEGEORGE. Thank you, Mr. Chairman. Mr. Chairman and members of the subcommittee, it is an honor and a personal privilege to appear here today on behalf of the Paralyzed Veterans and its membership. I want to truly thank you for the invitation to appear here today to make comment on this very important agenda.

Mr. Chairman, PVA believes that one of the most critical tasks of VA's Veterans Benefits Administration, Compensation and Pension Service, is the ability to provide in a timely and accurate manner disability benefits to our Nation's veterans, their dependents and survivors. For those eligible beneficiaries, whether they be service-connected or nonservice-connected recipients, nothing could be more important except for health care than receiving those benefits granted by law to which they are entitled. An entitlement, by definition, implies timely delivery of benefits.

At this point I won't go over the statistical data. You already have alluded to that earlier. But I would point out that these dreadful statistics match the delays which Vietnam veterans suffered and faced 25 years ago. At that time, however, the active duty force was almost twice the size of today's armed forces.

Mr. Chairman, these figures are evidence of dramatic increases in the time it takes to adjudicate all categories of veterans' claims. They are unacceptable to this veterans' service organization.

In assessing the overall problems facing the Compensation and Pension Service, it is Paralyzed Veterans of America's opinion that inadequate staffing levels render VBA unable to effectively accomplish its mission. One must realize that there is a critical interaction between the various services within VBA. Declining numbers of veterans' benefits counselors, vocational rehabilitation specialists, adjudication and Rating Board personnel, and others has become a malignancy in the adjudicative process.

VA should facilitate modernization of its automated data processing systems, but PVA also believes that it is important for VBA to

oppose reductions in FTEE as a trade-off for modernization. We believe there should be a clear understanding by VBA management that a sufficient level of FTEE is the most important factor in restoring good service to veterans. As far as modernization goes, we believe that the VA should have it once and for all.

I do have to relate to some other figures. PVA strongly recommends a fiscal year 1994 budget increase of 2,013 VBA FTEEs and 336 general administration FTEEs included in a total general operating expense account of 2,508 FTEEs for program claims processing purposes. There is a vital link between the GOE account and VBA's ability to carry out the laws that mandate delivery of the numerous entitlement programs under VA's jurisdiction.

I would point out that while we mention these FTEE figures that we advocate, it was astounding to hear the Secretary say yesterday that he was cutting 63 FTEEs from the GOE account.

VBA has made some strides in training, but most notably in establishing the VBA Training Academy in Baltimore, Maryland. VBA should continue to expand this training activity for new personnel and provide continuing education for employees to maintain proficiency in an always changing environment. We strongly urge Congress to support this effort by appropriating $8 million for VBA training in fiscal year 1994.

PVA is convinced that most savings may be brought about without legislation. However, what is needed first and foremost remains the oversight work of this honorable subcommittee and the Senate committee. In that process, PVA does urge Congress to legislate reasonable timeliness standards for benefit and service delivery.

As PVA has stated in earlier subcommittee hearings, it is not the Court of Veterans Appeals that is impacting on the VA adjudication system, but VA's own regulations which the court is now compelling VA to obey.

Mr. Chairman, PVA thanks you and the members of the subcommittee for your willingness to engage in aggressive oversight of the Veterans' Benefits Programs. This concludes my testimony, and thank you again very much.

Mr. SLATTERY. Thank you, Mr. DeGeorge. Again, good luck to you.

[The prepared statement of Mr. DeGeorge appears at p. 91.]

Mr. SLATTERY. Mr. Williams.

Mr. WILLIAMS. I would defer to Mr. Wilkerson.

Mr. SLATTERY. Okay, Mr. Wilkerson.

Mr. WILKERSON. Sorry for the confusion, Mr. Chairman.

STATEMENT OF PHILIP R. WILKERSON

Mr. WILKERSON. The American Legion appreciates this opportunity to comment on current operations of the Veterans' Benefits Administration. We wish to welcome you and commend you, Mr. Chairman, for scheduling this hearing today to consider some of the causes, and also some of the possible solutions to this ever-increasing problem of a backlog in pending benefit claims in the regional office.

VBA has acknowledged that both timeliness and quality in claims adjudication continue to be major problems. Its own statistics as well as those of the Board of Veterans' Appeals affirm the

continued deterioration in service being provided to veterans and other claimants.

We believe the current situation can be traced back to the mandated personnel reductions imposed on VBA over the past 12 years. As a result of limited staffing, ADP and training resources, the regional offices have been unable to keep pace with the existing workload and at the same time effectively implement new benefit and due process legislation enacted by Congress.

Decisions by the Court of Veterans Appeals over the last 2½ years have highlighted fundamental deficiencies and inequities in the adjudication and appeals process. Productivity has been further slowed while VBA revises its procedures and regulations to meet the new judicial review standards.

We are pleased that VA's proposed budget for fiscal year 1994 includes an additional 242 FTEE for the regional offices. Clearly this is a long overdue step in the right direction. But it will not produce, in our opinion, a substantial or immediate reduction in the backlog in the near term. A number of initiatives have been implemented and are currently under evaluation which we support and believe could help streamline and improve the claims processing for benefits for veterans.

Productivity and quality, however, continue to be affected by the fact that trainees currently make up 35 percent of the adjudication staff, and even under the best of circumstances it takes at least 2 years before an individual becomes fully productive. Meanwhile poor quality decisions and the lack of necessary development contribute to a sustained level of appeals and a high rate of remands by the Board of Veterans' Appeals.

VBA has established its Veterans Benefits Academy to supplement on-station training, and we support the continued utilization of this type of facility, which is located in Baltimore. An improved level of training for all of those involved in the claims process will be critical to any long-term solution to the problem of the backlog. We do not believe additional personnel alone will resolve the problems in the quality and timeliness in the adjudication process.

Modernization of the ADP systems is another key element, and while we wish to see this program proceed as quickly as possible, we do not want to see vital resources wasted because of poor planning or hasty decisions such as those highlighted by the General Accounting Office.

Our formal statement also discusses several recommendations for certain administrative and procedural changes which we believe could help improve quality and timeliness in VBA operations.

With respect to training, we believe separate funding should be established for BVA's training activity to provide standardized instruction and continuing education to personnel responsible for claims processing and adjudication. We believe this should be similar to the very successful program currently used by the Department of Labor, Veterans Employment Service, which trains its LVERs and DVOPs through the National Veterans Training Institute. This change would help ensure continuing support for this necessary and important program.

We also believe VBA must develop and implement more accurate and effective work measurement and quality control programs.

Such changes would permit managers at the local and Central Office level to have a more accurate picture of production, pending workloads, and resource needs.

We further recommend that VBA consider reorganizing the claims processing personnel in the regional offices into subunits which would be responsible for all actions on a particular claim. This concept would provide a greater degree of accountability and a mechanism for checks and balances. It would also be possible to more readily monitor cases or the reasons for cases being remanded by the Board of Veterans' Appeals and take necessary corrective action.

We also understand some consideration is being given towards eliminating or modifying the annual eligibility verification reports as a way of freeing up certain staff who could be reassigned to work on the case backlog. We believe VBA should re-examine other various review and reporting requirements related to statutory and management criteria. There are a number of special priority projects which would seem to consume a significant amount of adjudication time and resources. Some of these extra requirements could be reduced or eliminated or modified in some degree while still maintaining quality and protection for the particular program. Given such changes, we believe existing manpower with improved ADP support could begin to have a positive effect on the overall problem of the backlog.

That concludes our statement, Mr. Chairman.

Mr. SLATTERY. Thank you, Mr. Wilkerson.

[The prepared statement of Mr. Wilkerson appears at p. 94.]

Mr. SLATTERY. Mr. Schultz.

STATEMENT OF RICHARD F. SCHULTZ

Mr. SCHULTZ. Thank you, Mr. Chairman. I wish to express DAV's deep appreciation for this opportunity to provide the subcommittee with our assessments on the claims adjudication and appeals processing at VA regional offices, as well as the impact of budget shortfalls and judicial review on the benefit delivery system. DAV certainly appreciates the fact that you have placed the highest priority on bringing about major improvements in the veterans' claims adjudication system.

Mr. Chairman, during the past decade we have witnessed a steady decline in VA's ability to provide America's veterans population with quality benefit determinations in a timely manner. The current downsizing of our military is further compounding VA's ability to deliver benefits in a timely manner, and there has been a dramatic increase in the time it takes to adjudicate virtually all VA benefit claims.

Compensation and pension projections for fiscal year 1993 show that we have a backlog approaching 900,000 claims. Equally disturbing, we note that on October 1, 1991, there were approximately 43,500 claims pending at Rating Boards throughout the country, and currently that number stands at approximately 89,000.

During fiscal year 1993, it is estimated that 4 million telephone calls to VA will be blocked, with an additional 11 percent of individuals who call VA abandoning their calls after being put on hold and not receiving service. Also, VA's Vocational Rehabilitation and

Counseling Service workload will increase by approximately 400 percent in fiscal year 1994. BVA's response time will be more than 550 days by the end of fiscal year 1994.

Our purpose, Mr. Chairman, in pointing out these deficiencies within the VA should not be construed, however, to reflect negatively upon VA employees. To the contrary, DAV wishes to acknowledge the efforts of those dedicated VA employees whose tireless efforts too often go unnoticed.

Mr. Chairman, in an effort to provide the subcommittee with an up-to-date assessment of the problems being faced by VA's Compensation and Pension Service, DAV convened a meeting of DAV, VA and House and Senate Veterans' Affairs Committee staff. During our roundtable discussion a wide variety of topics regarding VA's compensation and pension claims adjudication process were discussed. It was the consensus of opinion that there are no quick fixes.

Likewise, DAV and VA regional office employees unanimously agree that the bottleneck in the adjudication process is at the Rating Board. The Rating Board function within the claims adjudication process is the most time consuming and requires the greatest degree of training. It is obvious to us that more resources in terms of employees and enhanced ADP equipment must be directed to the compensation and pension claims rating function at the regional office level.

Mr. Chairman, our written statement describes a number of problem areas in the claims adjudication process, and we have mentioned a couple of legislative remedies which we believe would help alleviate some of the problems. We do not, however, support a change in current law as it relates to VA's duty to assist veterans in developing pertinent evidence in VA's claims. VA's duty to assist is not limitless as some would have the committee believe. Current law and COVA decisions simply require the VA to assist veterans in obtaining relevant pertinent facts in well-grounded claims. We believe this is not an unreasonable request.

Mr. Chairman, the military reduction in force has been noted as a major source in the increased compensation claims workload and it is contributing to the ever-increasing backlog of compensation claims. It would seem only fair that VA receive funds from DOD, perhaps from the conversion fund, to help handle the increased compensation workload created by the military reduction-in-force.

We also wish to note here that the President's stimulus package contained a request for some $302 million to reduce delays in processing disability Social Security claims. We believe that it would be only fair that the VA also be included in that since we believe that we are in a crisis situation here.

Mr. Chairman, we are encouraged by VA management's willingness to explore new and innovative ways to process compensation claims, and we would urge that they continue in those efforts. Many administrative changes to streamline and improve the way the VA adjudicates claims have been identified and suggested. These changes alone, however, will not appreciably reduce the ever-growing backlog of VA claims. We believe that a crisis situation currently exists in VA's Compensation and Pension Service,

and in order to address this crisis there must be a large increase in employees.

The VA itself has estimated that it will take approximately 1,050 additional employees to reduce the claims backlog to somewhere around 200,000 claims. These additional employees, we believe, is but a small price to pay.

I thank you for the opportunity to present our views.

Mr. SLATTERY. Thank you, Mr. Schultz.

[The prepared statement of Mr. Schultz appears at p. 104.]

Mr. SLATTERY. At this time I would like to recognize the ranking minority member, Mr. Bilirakis, who is able to join us, for any questions or comments that he might have, and then I will recognize the gentleman from Texas.

OPENING STATEMENT OF HON. MICHAEL BILIRAKIS

Mr. BILIRAKIS. Thank you, Mr. Chairman. I appreciate the gentleman from Texas not minding my being recognized. I apologize to all the panelists and, of course, to my committee for not having been here earlier. We do this to ourselves up here. I am ranking on Energy and Power Committee and we had the budget this morning with Secretary O'Leary testifying, and I just had to be there, particularly to lead the battle on the energy tax, which I think is a very regressive type of a tax, so I didn't really have much choice.

And I appreciate the VA personnel still being here. I see Mr. Vogel back there. I have always thought that it would be nice if they stick around and listen to the testimony from the other panels and they have done that in recent years. I have always been very appreciative of that.

And I very much appreciate, Mr. Chairman, your taking time—well, your taking time to hold this hearing, but you are basically placing this on a priority basis as far as this committee is concerned. I think this is just a great idea, and if we can concentrate and put on blinders—I hate to put it that way—as far as other areas are concerned; hopefully we can all play a part in expediting this process.

Mr. Chairman, you may know that this past Monday evening I held a meeting in my district, actually it was at my American Legion Post which happens to be just outside of my district now as a result of the new redistricting. But I noticed all of the posts in my entire area sent their service officers, and I wanted to sit down with them to get their ideas and hear some of their problems, their practical, real-world-type of problems, so that I could carry them forward here to not only this hearing but to this committee, because I know the chairman would be very interested in them.

And I also want to say, I think, at the outset my tremendous esteem for the service officers in this country of ours, the volunteer service officers. Obviously, the service officers who work for the VA, et cetera, but principally the volunteer service officers in the posts, the great job that they do. They catch a lot of flak from their fellow veterans who don't understand that these people are working for nothing doing the best that they can for them.

They shared with me the delay in obtaining physical examination, for instance. We heard from a veteran who waited 3 years to be examined by a VA physician in connection with the filing of his

claim. We were told by veterans being examined by general practitioners and about the exams that not being acceptable to the people in the adjudication process because they wanted an orthopedist or, you know, some sort of a specialist, obviously, to examine them. We were told about the antiquated computer equipment in the regional office which creates the inefficiencies in the claims process, because of not having enough computer equipment to allow their employees to keep up with the workload. Mr. Schultz certainly referred to this, and I am sure others of you did too.

We are told about VA employees keeping veterans on hold—you mentioned this—while they wait for a computer terminal. According to one very knowledgeable service officer, 25 percent of the calls received by the regional office in St. Petersburg, FL, John, 25 percent are lost because the office does not have enough computer equipment. Many service officers complain about the complicated forms. They talk about the legalese. The lawyers, actually, who don't know, who are not knowledgeable on a grass-roots, real world basis, actually creating these forms, and the terminology and the wordability, if I might use that word, and how many veterans simply can't understand what is required of them because of the way the forms are worded. I mean shame on us that we can't do better—there are a lot of things.

We know that money to a large degree can be part of the answer or go a long way towards addressing these problems. You have all talked about it. We need more personnel, certainly in St. Petersburg and in so many other areas. But there are things that we can do that are not related to money.

It is just a shame, really, that there are down-to-earth changes that can be made, I think, that can speed up the process. Now, we know what some of the problems are, some of the delays. We know that stare decisis, the precedents now being created by the Court of Veterans Appeals, affects the entire process all the way to the beginning. I assume, Mr. Chairman, that has been discussed. Certainly we have talked about it in some of our meetings.

There are a lot of things of that nature that maybe we can't do too much about. A recommendation was made that when the Board of Veterans' Appeals makes their decisions they don't share that information in a timely enough fashion with the regional office, and the regional offices are not aware of that information and they proceed sometimes down the wrong path because it is not given to them on a timely enough basis.

So there is an awful lot I think we can do that doesn't cost an awful lot of money. And, obviously, we have got to all work towards trying to increase the dollars that go into the system too, and hopefully we are going to be in a position to do that. Hopefully, you people out here would realize that we are in an ivory tower, and as much as I feel that the chairman really is serious about trying to fix this problem, and we are all working so hard at it, you have got to advise us. You have got to really work with us.

I understand that the VFW testified to training facilities being set up at certain regional office similar to the Adjudication Training Academy in Baltimore, I guess because of the difficulty and the expense of bringing people to the Academy, and talking—the term that was used was pinpoint training that was mentioned by the

VFW. I wonder if I might get your opinions on that particular point.

Mr. SCHULTZ. Well, Mr. Bilirakis, certainly we in the DAV would support any efforts to provide more training to VA employees. Currently there is just not enough money in the budget. I know that the VA Adjudication Academy, I believe for fiscal year 1993, has approximately $2 million to spend to bring people in and train them. And certainly if there were adequate training facilities set up around the country it would obviously be much better.

Mr. BILIRAKIS. Sure, it would be. Logically, it would seem to be a lot less expensive, wouldn't it?

Mr. SCHULTZ. Yes, sir.

Mr. BILIRAKIS. Actually, basically going to where the people are, rather than taking the people and shipping them all to Baltimore at great expense.

Mr. SCHULTZ. I certainly agree with that, sir.

Mr. BILIRAKIS. Would you agree with that, American Legion? And, Frank?

Mr. WILKERSON. I don't really know, Mr. Bilirakis, whether or not this would provide a greater economy of scale, as it were, versus a centralized training facility. I do know that the Department of Labor's NVTI program seems to work very well. They bring in their people from all over the country. This is an ongoing process. I think the suggestion for pinpoint training where certain types of problems or certain issues can be identified at a particular station warrants serious consideration, and as far as I know the Central Office staff do go out to provide such on-site training. Now that, of course, is very time consuming and; it takes away from their other duties in Washington here.

I think there is a need to identify what the problems are, what the training needs are, really, in the field. Certainly we have a large percentage of people that are basically new to this type of work, due to retirements, turnover, and the overall long process that it takes to get somebody fully knowledgeable or knowledgeable enough to produce a quality product. So I think whatever training needs to be done could probably be provided at a centralized source rather than totally decentralized, in my opinion—my personal opinion.

Mr. BILIRAKIS. Well, I suppose you have to take everything into consideration.

Frank, I don't know if you have an opinion, but I do want to say how much I personally am going to miss you. It has always been nice to kind of walk into these hearings and see Frank DeGeorge sitting there, and you always have a nice kind word and a smile.

Mr. DEGEORGE. Thank you. It has been a pleasure working with you, also.

Mr. BILIRAKIS. Thank you. However, do you have an opinion on this?

Mr. DEGEORGE. Regarding the training, I think we would be looking at another cost factor setting up training schools across the Nation. However, there are other ways that could be examined to provide the training nationwide using video technology, electronic mail, case-of-the-week kind of thing, a case in each different cat-

egory and be presented to every station across the Nation all at one time, and using that modem or that vehicle.

Mr. BILIRAKIS. Sure.

Mr. DEGEORGE. It is just a thought.

Mr. BILIRAKIS. Yes. Very good. I don't know how much of that might be taking place now, but that is certainly being used by the colleges.

Mr. DEGEORGE. And there is one other thing that I always thought—excuse my interruption—that should be employed is that once the trainees come out of the Academy that it should be part of their curriculum to go back as a unit into the field for a week or 2 week part of their course, so that they would have on-station training provided, and they would be able to transmit what they have learned to the people in the regional office. That is a possibility.

Mr. BILIRAKIS. Thank you, Frank. Thank you very much, Mr. Chairman.

Mr. SLATTERY. The gentleman from Texas. Chet.

Mr. EDWARDS OF TEXAS. Thank you, Mr. Chairman. I appreciate Mr. Bilirakis' comments and observations. I thought they were excellent.

Just one question. It was previously mentioned that perhaps they are having problems resulting from lack of adequate physicals of military personnel leaving the services. Can you tell me your best understanding of what that situation is right now, and give us some perspective based on your past experiences of how serious a problem that is later when you are trying to determine a claimant's request?

Mr. SCHULTZ. Well, Mr. Edwards, I can tell you that it is a very serious problem later on, and if there is no separation examination, especially when someone comes to you several years down the road and says, "Well, this happened to me in service," and, you know, "I had this type of problem." Having been a service officer and represented veterans on their claims, that is a problem if you don't have a good separation examination.

I think what is happening now with the Army basically not doing separation examinations or not requiring separation exams, I think that is going to cause more and more problems down the road. It is obviously a problem for the veteran, and currently it is a problem for the VA, if you don't have an adequate exam. It would certainly help them tremendously.

And I was pleased to hear that the VA is working with the military to try and come up with a better separation examination where the VA could possibly use that to cut some time off of the claims' process.

Mr. EDWARDS OF TEXAS. What is happening right now? You mentioned the Army. Is the Army not carrying out any sort of separation examination? And what is happening with the Navy and the Air Force and the Marines?

Mr. SCHULTZ. Well, as I understand it, I believe the Navy is requiring examinations, but the Army does not require them. So that means it is kind of a hit and miss situation. If a person is not alleging a disability at separation, they just don't give them a separation examination.

Mr. WILKERSON. We had previously been aware of certain types of problems, particularly among Desert Storm personnel. The most directly affected were the reservists who were being released from active duty without any type of discharge, dental or physical exams, as we did receive a number of complaints. Through our national security division which has liaison with Department of Defense, we brought this matter to their attention to try to make sure that these people did receive proper examinations.

A separation physical examination, including dental, is critical to a veteran's claim, no matter when it is filed, whether it is filed immediately or at some later date. It provides necessary and important information for the VA to properly adjudicate the claim.

My personal opinion is that I believe it is not a bad idea for the VA to work more closely with the military to try and develop a process by which there is not two separate entities at work in developing information which the other will eventually rely on to pay benefits to which individuals are likely entitled. There needs to be greater coordination. Such I believe is underway or at least there is some discussion at the current time. The thought did occur to me as we were discussing this that on the individual's DD–214 there is a specific place where it indicates whether or not the individual had a dental examination within a certain period of time. I don't believe that there is a similar notation for a separation physical examination. A change to the DD–214 might be one means of ensuring that the individual did receive a proper, full and comprehensive exam prior to separation.

Mr. EDWARDS OF TEXAS. The fact that the Army—I don't know what is happening in the other services, but the fact that the Army is not carrying out these separation examinations, is that a change from what policy has been for decades, or is that the way business has been run in the past?

Mr. WILKERSON. I believe it is a change. Whether or not it is a top level policy decision or not, I am not sure. But certainly for whatever reasons they have placed less emphasis on this as part of the discharge process, and we would certainly support any efforts to ensure that individuals do receive a separation exam.

Mr. EDWARDS OF TEXAS. I could see where the Army caught up in many other challenges, not the least of which is how to handle their business with the downsizing. Probably it is not a high priority for them to give a separation examination, but I can see the VA and the taxpayers paying for a generation or two for the fact that they weren't given—these personnel weren't given separation examinations. So I would very much like to look into that.

Mr. DEGEORGE. Mr. Edwards, certainly it is obvious that Paralyzed Veterans of America, unfortunately, and Disabled American Veterans do get an examination before discharge, and I don't treat that lightly, although I chuckle. But what I want to bring to your attention is that whether or not there is a physical examination or not you have PTSD that comes into play in later years. You have MS, or multiple sclerosis, that an examination might not necessarily show up. So it is a 2-sided coin.

Mr. EDWARDS OF TEXAS. And I appreciate that. And I don't want to suggest for a second that having this examination is going to solve all of our problems. But I can just see a nightmare of cases

10, 20, 30 years from now based on—you know, just based on cases that have come to me where there wasn't an adequate exam in past years.

Mr. DEGEORGE. PVA would advocate an examination.

Mr. EDWARDS OF TEXAS. Perhaps, again some of the resources that the Department of Defense, or we are looking at in the armed services budget for transition funding ought to be put into the—I mean that is a very important part of the transition phase, as far as I am concerned. Maybe we ought to work on that.

Thank you, Mr. Chairman.

Mr. SLATTERY. One last question from me. There has been discussion already today about this idea of consolidating some of the adjudication divisions and the regional offices. Not consolidating regional office, just the adjudication divisions. How do you all react to that? How do you see that? Is that something that should be looked at in an effort to try and serve the veterans better? Talk to me about that.

Mr. SCHULTZ. Mr. Chairman, I think the VA always needs to take a look at how they can do business better. How they can process claims in a more timely fashion and maybe identify economies of scale where they can. I believe that there may be instances where certain functions could be consolidated. And I don't say that to mean that I have identified any areas. I am just saying that there may be. I think we need to look at that.

I think that with the new equipment, and they say it is going to do a lot of things for us, it is going to give a veteran's benefit counselor access to more information and maybe make them more active in the adjudication process itself. So maybe there could be some things that could be changed where an individual can come into an office and immediate help be given to them because of the modernized equipment. I believe that there are other locations throughout the country. Unfortunately, when you talk about 58 regional office, the VA doesn't have a presence in a lot of major cities across the country. There are a lot of major cities with no VA presence. And maybe with additional equipment they could do that. They could better be able to put people in more offices. And so I would advocate that, quite frankly, we need to expand VA's presence out in the field rather than to pull it back.

That doesn't mean that all functions have to be done at one regional office or at 58 regional office. But we need to look at where our presence is and where the population is.

Mr. WILKERSON. The American Legion's position is that we would be strongly opposed to any closure of regional offices, per se. We believe they provide a valuable function as the system is currently structured. However, we also feel it is necessary that VA evaluate how it does in fact do business and provide service to veterans.

But I think serious discussion of consolidation of adjudication divisions or something of that nature is, perhaps, given the nature of the current problem, somewhat premature. I think any solution that this would provide would only be after real progress has been made toward resolving the current backlog problem, and any such solution there is somewhat downstream. There is a tremendous number of cases in the pipeline and the number is growing, and

realistically it will be years, rather than any near term, before sufficient progress can be made before that type of proposal should be given serious consideration.

Mr. SLATTERY. Okay. Mr. DeGeorge?

Mr. DEGEORGE. I agree with my cohorts.

Mr. SLATTERY. Okay. One last observation before we wrap this meeting up today. I hope that you all, if you haven't done this yet, will get together and spend sometime talking with the other veterans' organizations about what you all think that we can do on this and working together. I would like to get some of your recommendations beyond what we have heard here today and sort of a consensus view of where we go from here. If you all could make that happen and get back with me within the next 2 weeks, I would really appreciate it.

I just think it is very important for us to do that to keep our focus on this problem, if we are going to get it solved. So, if you all would press ahead with that, I would appreciate it. Will you do that?

Mr. DEGEORGE. Yes, sir.

Mr. WILKERSON. Yes, sir.

Mr. SCHULTZ. Yes, sir.

Mr. SLATTERY. Okay. Are there any other questions?

[No response.]

Mr. SLATTERY. One final note. I am advised that the American Ex-POWs have submitted a statement for the record, and it will be included in the formal hearing record. We appreciate their testimony and participation today here also.

Before I adjourn I want to once again acknowledge, Frank, your service to veterans in this country over the last 20 years, and again thank you very much. We have all appreciated working with you, and we appreciate very much your contribution. So good luck to you, Friend.

Mr. DEGEORGE. Thank you. It is nice to know that veterans have people like yourself and this committee in place to work on their behalf. Not that I match up to that in any way, shape or form. It is a privilege to work with the committee.

Mr. SLATTERY. We are going to miss you. Thank you.

I appreciate all the panelists today participating. It has been helpful. We are going to have another hearing on May 6 to keep the focus on this problem until we find some solutions to it. Again, thank you very much for participating today. Appreciate it.

Meeting is adjourned.

[Whereupon, at 11:06 a.m., the subcommittee was adjourned, to reconvene subject to the call of the chair.]

APPENDIX

STATEMENT OF

R. J. VOGEL

DEPUTY UNDER SECRETARY FOR BENEFITS

DEPARTMENT OF VETERANS AFFAIRS

BEFORE THE

SUBCOMMITTEE ON COMPENSATION, PENSION AND INSURANCE

COMMITTEE ON VETERANS' AFFAIRS

HOUSE OF REPRESENTATIVES

APRIL 21, 1993

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

I AM PLEASED TO BE HERE TODAY TO DISCUSS CHALLENGES VA IS FACING IN PROCESSING VETERANS' CLAIMS AND WHAT WE ARE DOING TO MEET THESE CHALLENGES.

WITH ME THIS MORNING IS J. GARY HICKMAN, DIRECTOR OF THE COMPENSATION AND PENSION SERVICE.

LIKE MANY ORGANIZATIONS TODAY, VA IS CHANGING. INCREASING REQUESTS FOR ASSISTANCE, NEW PROGRAMS AUTHORIZED BY CONGRESS, AND IMPACTS OF JUDICIAL REVIEW ARE JUST A FEW OF THE INFLUENCES WHICH ARE FORCING US TO REEXAMINE THE WAY WE DO BUSINESS.

BECAUSE OF THE RECENT DOWNSIZING IN THE MILITARY BY THE DEPARTMENT OF DEFENSE, WE ARE SEEING AN INCREASE IN THE NUMBER OF ORIGINAL COMPENSATION CLAIMS FILED. THIS IS COUPLED WITH AN INCREASE IN THE NUMBER OF ISSUES RAISED ON EACH CLAIM AND AN INCREASED VOLUME OF CLAIMS MADE BY VETERANS WHO ARE SEEKING SERVICE CONNECTION IN ORDER TO RECEIVE MEDICAL TREATMENT FROM VA. FOR EXAMPLE, ORIGINAL COMPENSATION CLAIMS IN FY 1991 TOTALLED 104,000. FOR BOTH FY 1993 AND 1994 WE ARE PROJECTING 160,000, A NEARLY 54 PERCENT INCREASE OVER 1991 IN THIS TYPE OF CLAIM ALONE. IN SPITE OF INCREASED WORKLOAD, HOWEVER, WE HAVE NOT RELAXED OUR EFFORTS TO ASSIST OUR CLAIMANTS, INCLUDING THOSE INDIVIDUALS AFFECTED BY MILITARY DOWNSIZING. THE CHALLENGES OF THE LAST FEW YEARS HAVE CREATED SOME DIFFICULTIES

FOR US, BUT VETERANS ARE NOW RECEIVING BETTER DECISIONS AND MORE INFORMATION ABOUT THE DECISIONS.

CLAIMS PROCESSING HAS UNDERGONE A STEADY PROCESS OF REDEFINITION THROUGH THE COMBINED INFLUENCE OF THREE IMPORTANT DEVELOPMENTS: CHANGES IN DUE PROCESS PROCEDURES REQUIRED BY THE SEMENCHUK COURT DECISION, CLAIMANT NOTIFICATION REQUIREMENTS OF PUBLIC LAW 101-237 (38 U.S.C 5104), AND THE ADVENT OF THE COURT OF VETERANS APPEALS. THE FIRST TWO FACTORS ARE IMPORTANT SAFEGUARDS OF AN INDIVIDUAL'S DUE PROCESS RIGHTS AND ENSURE THAT TIMELY AND ACCURATE NOTICE, INCLUDING APPELLATE AND PROCEDURAL RIGHTS, IS PROVIDED AFTER A DECISION HAS BEEN REACHED ON EACH CLAIM. THE NOTIFICATION REQUIREMENTS OF PUBLIC LAW 101-237 PROVIDE THAT NOTICE OF AN ADVERSE DECISION BY VA INCLUDE A STATEMENT OF THE REASONS FOR THE DECISION AND A SUMMARY OF THE EVIDENCE USED IN REACHING THE DECISION.

JUDICIAL REVIEW, HOWEVER, IS ALSO HAVING AN IMPACT ON CLAIMS PROCESSING. ALTHOUGH THE VETERANS' JUDICIAL REVIEW ACT WAS ENACTED NOVEMBER 18, 1988, ITS FULL IMPACT WAS NOT APPARENT AT THE REGIONAL OFFICE LEVEL UNTIL LATE 1991. SINCE THEN, THE IMPACT HAS CONTINUED TO GROW. THE COURT REQUIRES THAT WE PROVIDE MORE DETAILED EXPLANATIONS OF OUR DECISIONS. WE ARE TAKING MORE TIME TO ASSIST CLAIMANTS IN OBTAINING EVIDENCE IN SUPPORT OF THEIR CLAIMS. THE RESULT OF THIS COMPREHENSIVE DEVELOPMENT, OF COURSE, IS THAT LENGTHIER AND MORE COMPLEX EXPLANATIONS OF OUR DECISIONS ARE BEING MADE BY REGIONAL OFFICE STAFFS. THIS ALONE WOULD CAUSE THE PROCESS TO TAKE LONGER. GIVEN THE FINITE RESOURCES AVAILABLE, HOWEVER, THE INEVITABLE RESULTS ARE GROWING BACKLOGS AND ADDITIONAL DELAYS IN ADJUDICATING CLAIMS.

DECISIONS AND ACTIONS OF THE COURT MAY HAVE A PRECEDENTIAL IMPACT ON LARGE CATEGORIES OF CIAIMS. THIS CREATES A TWO-EDGED SWORD BOTH FOR US AND OUR CLAIMANTS. ALTHOUGH COURT DECISIONS HAVE RESULTED IN IMPROVED VA DIRECTIVES AND PROCEDURES, THEY ALSO HAVE SLOWED THE DECISION-MAKING PROCESS. CONSIDER ALSO THAT THERE IS APPROXIMATELY A TWO-YEAR GAP FROM REGIONAL OFFICE

DECISION TO REVIEW BY THE COURT. A NEW COURT PRECEDENT, HOWEVER, MUST BE APPLIED NOT ONLY PROSPECTIVELY BUT ALSO TO SIMILAR PENDING CLAIMS DATING BACK AS LONG AS TWO YEARS.

THE COMBINED IMPACT OF DUE PROCESS CHANGES, NOTIFICATION REQUIREMENTS, AND THE COURT DECISIONS IS ESSENTIALLY THIS: CLAIMS EXAMINERS MUST TAKE MORE TIME TO ENSURE THAT ALL ISSUES ARE COMPLETELY DEVELOPED AND THAT THE REASONS FOR THEIR DECISIONS ARE FULLY AND CLEARLY ARTICULATED TO CLAIMANTS. WE ARE ACUTELY AWARE OF THE IMPORTANCE OF ASSISTING VETERANS AND THEIR FAMILIES IN ESTABLISHING ENTITLEMENT TO BENEFITS, AND, THEREFORE, WE ARE PROVIDING MORE ASSISTANCE TO OUR CLAIMANTS IN DEVELOPING THEIR CLAIMS TO THE FULLEST EXTENT POSSIBLE. OUR DECISION MAKERS NEED - AND ARE TAKING - MORE TIME TO ADDRESS ALL ISSUES THOROUGHLY BEFORE COMPLETING A DECISION, WHETHER EXPRESSLY CLAIMED OR SIMPLY INFERRED. TO ACCOMPLISH ALL THIS ADEQUATELY, WE MUST COMMUNICATE BETTER THAN WE HAVE IN THE PAST. WITH THIS GOAL IN MIND, WE HAVE VIRTUALLY ELIMINATED COMPUTER-GENERATED DECISION NOTICES FOR DENIED CLAIMS IN FAVOR OF INDIVIDUALLY COMPOSED LETTERS. REGARDLESS OF WHETHER VA GRANTS OR DISALLOWS A CLAIM FOR BENEFITS, WE MUST MAKE EVERY EFFORT TO PROVIDE THE INFORMATION THE CLAIMANT NEEDS TO UNDERSTAND THE DECISION WE HAVE MADE.

TO PUT THE MATTER SIMPLY, CLAIMS PROCESSING AND THE ROLE OF THE CLAIMS EXAMINER HAVE CHANGED. THE ADJUDICATIVE REVIEW OF A CLAIM IS NOW MORE COMPLEX AND REQUIRES MORE INTENSIVE ANALYSIS. CONSIDERING THAT IT REQUIRES A MINIMUM OF TWO YEARS TO BECOME A FULLY PROFICIENT CLAIMS EXAMINER, YOU CAN SEE WE FACE TREMENDOUS CHALLENGES IN THE AREA OF TRAINING WHEN WE HIRE NEW CLAIMS EXAMINERS. NOT ONLY MUST WE WAIT A GOOD WHILE BEFORE A NEW CLAIMS EXAMINER IS FULLY PROFICIENT TO HANDLE THE MORE COMPLEX ISSUES, WE MUST DIVERT EXPERIENCED PERSONNEL FROM CLAIMS PROCESSING TO PROVIDE THE GUIDANCE AND FEEDBACK A TRAINEE NEEDS.

VA HAS BEGUN TO TEST A NUMBER OF IDEAS TO IMPROVE TIMELINESS OF CLAIMS PROCESSING AND SERVICE. THE DEPARTMENT OF

THE ARMY HAS AGREED TO TEST THE TRANSFER OF VETERANS' SERVICE MEDICAL RECORDS DIRECTLY TO VA FROM THE MILITARY INSTALLATIONS WHERE SOLDIERS ARE SEPARATED. A VA SERVICE MEDICAL RECORDS CENTER HAS BEEN ESTABLISHED TO RECEIVE THE RECORDS IMMEDIATELY UPON A SERVICE MEMBER'S DISCHARGE FROM ACTIVE DUTY. SINCE EXPERIENCE HAS SHOWN THAT DISABILITY COMPENSATION CLAIMS OF RECENTLY DISCHARGED VETERANS ARE DELAYED PENDING VA'S RECEIPT OF SERVICE MEDICAL RECORDS, WE BELIEVE THAT ARMY VETERANS WILL SEE MEASURABLE IMPROVEMENTS IN OUR SERVICE.

VA HAS PUT INTO PLACE A STANDARD REQUIRING THAT VA MEDICAL FACILITIES COMPLETE AND RETURN EXAMINATIONS WITHIN AN AVERAGE OF 35 DAYS FROM THE DATE OF REQUEST. IN JUNE 1991, THE AVERAGE TURN-AROUND TIME WAS 56 DAYS; IN OCTOBER 1992, IT WAS 34 DAYS.

VA IS EXPLORING AUTOMATED OFFICE PROCESSES TO ASSIST DECISION MAKERS IN THE ADJUDICATION PROCESS. FOR EXAMPLE, AN AUTOMATED MEDICAL INFORMATION EXCHANGE (AMIE) IS ONE INITIATIVE WE HAVE IMPLEMENTED. WITH AMIE, REGIONAL OFFICES ELECTRONICALLY COMMUNICATE WITH VA HOSPITALS ABOUT HOSPITAL ADMISSIONS AND DISCHARGES AND REPORTS OF PHYSICAL EXAMINATIONS.

WE CURRENTLY ARE TESTING AT FIVE REGIONAL OFFICES AN AUTOMATED SYSTEM FOR MONITORING CLAIMS FOLDER MOVEMENT THROUGH THE USE OF BARCODES ATTACHED TO THE FILES. THIS SYSTEM, CALLED "COVERS," FOR CONTROL OF VETERANS RECORDS, WILL ENABLE OFFICES TO BETTER TRACK THE LOCATION OF CLAIMS FILES IN ORDER TO ATTACH MAIL, EXPEDITE FOLDER REQUESTS, AND GENERALLY SPEED UP CLAIMS PROCESSING.

THE COMPENSATION AND PENSION SERVICE HAS INITIATED A PROJECT TO DEVELOP AND TEST AN AUTOMATED "EXPERT SYSTEM" PROTOTYPE, DESIGNED TO ASSIST CLAIMS PROCESSERS IN MAKING THE DECISIONS NEEDED TO ADJUDICATE CLAIMS. THE SYSTEM WILL SERVE AS A HELPMATE TO ENSURE THAT ALL DEVELOPMENT HAS BEEN DONE AND ALL REQUIRED EVIDENCE IS ON FILE BEFORE THE CLAIMS EXAMINER OR RATING SPECIALIST MAKES A DECISION.

IN ANOTHER PROTOTYPE, WE ARE TESTING AT THE ATLANTA AND NEW ORLEANS REGIONAL OFFICES VOICE-RECOGNITION TECHNOLOGY WHICH RATING SPECIALISTS WILL USE TO PRODUCE RATING DECISIONS, STATEMENTS OF THE CASE IN APPEALS, AND OTHER DOCUMENTS. THE TECHNOLOGY WILL ALLOW SPEECH TO BE INPUT DIRECTLY INTO A COMPUTER AND AUTOMATICALLY TRANSCRIBED INTO A WORD PROCESSING DOCUMENT, WITHOUT THE NEED FOR A TYPIST. WE EXPECT THAT SUCH A SYSTEM WILL INCREASE THE TIMELINESS AND ACCURACY OF RATING BOARD DOCUMENTS.

BECAUSE OF THE CHANGES BROUGHT ABOUT BY THE REVISION OF OUR DUE PROCESS REQUIREMENTS AND THE STATUTORY REQUIREMENT REGARDING NOTIFICATIONS OF DECISIONS, WE HAVE BECOME INCREASINGLY AWARE OF THE INADEQUACY OF OUR COMPUTER-GENERATED LETTER SYSTEM. THEREFORE, WE ARE DESIGNING A NEW AUTOMATED LETTER-GENERATION SYSTEM THAT WILL OPERATE FROM PERSONAL COMPUTERS INSTALLED AT REGIONAL OFFICES IN STAGE I OF VBA MODERNIZATION.

ONE ADDITIONAL PROJECT IS THE AUTOMATION OF VA DIRECTIVES, SUCH AS REGULATIONS AND MANUALS. WE ARE TESTING SYSTEMS WHEREBY ALL VA DIRECTIVES, CONTAINING THE MOST UP-TO-DATE INFORMATION, COULD BE ELECTRONICALLY AVAILABLE TO THE CLAIMS EXAMINER ALMOST INSTANTANEOUSLY.

VA ALSO SUPPORTS AND IS ACTIVELY PURSUING IDEAS DEVELOPED TO IMPROVE OR REENGINEER WORKFLOW METHODS. THE NEW YORK REGIONAL OFFICE, FOR EXAMPLE, IS PARTICIPATING IN AN OMB-WHITE HOUSE PROGRAM WHICH WILL FOCUS ON REDESIGNING THE CLAIMS PROCESS BY USING A CASE MANAGER/SELF-DIRECTED WORK TEAM. UNDER THIS CONCEPT, A HIGHLY TRAINED GROUP SHARES THE RESPONSIBILITY FOR A SERVICE OR PRODUCT. OUR GOAL IS FOR EACH TEAM MEMBER TO ACQUIRE THE ABILITY TO PERFORM EVERY TASK REQUIRED TO COMPLETE THE WHOLE JOB.

SIMILAR IDEAS ARE BEING USED AT A NUMBER OF OTHER REGIONAL OFFICES. THE PORTLAND REGIONAL OFFICE HAS ESTABLISHED A "VA SERVICE CENTER" WHICH COMBINES CERTAIN FUNCTIONS OF THE ADJUDICATION AND VETERANS SERVICES DIVISIONS. IN ADDITION, THE CLEVELAND, LINCOLN, PHOENIX, PITTSBURGH, SALT LAKE CITY, ST. PETERSBURG AND WINSTON-SALEM REGIONAL OFFICES ARE PARTICIPATING IN A PROJECT KNOWN AS "THE VETERANS BENEFITS COUNSELOR/VETERANS CLAIMS EXAMINER PLANNING INITIATIVE." THIS IS A QUALITY IMPROVEMENT MEASURE CO-SPONSORED BY THE COMPENSATION AND PENSION, EDUCATION AND VETERANS ASSISTANCE SERVICES. THESE REGIONAL OFFICES DEVELOPED AND ARE TESTING VARIOUS APPROACHES TO THE CASE-MANAGER CONCEPT. THE INDIANAPOLIS REGIONAL OFFICE IS EMPLOYING, ON AN EXPERIMENTAL BASIS, PERSONNEL DESIGNATED AS RATING ADMINISTRATIVE TECHNICIANS, TO ASSIST IN CONTROLLING THE WORKFLOW OF THE RATING BOARDS. THEY RECEIVE THE NECESSARY TRAINING TO OBTAIN A PROPER ORIENTATION TO THE MEDICAL AND LEGAL ASPECTS OF RATINGS.

WE HAVE AN ADJUDICATION OFFICERS ADVISORY COMMITTEE, RESPONSIBLE FOR CONSIDERING AND MAKING RECOMMENDATIONS IN AREAS AFFECTING ADJUDICATION DIVISION OPERATIONS. THIS YEAR WE WILL BE HOLDING FOUR ADJUDICATION OFFICERS CONFERENCES, ONE FOR THE ADJUDICATION OFFICERS IN EACH OF THE FOUR VBA AREAS. AT THESE CONFERENCES WE WILL FOCUS ON THE ISSUES OF CREATING MORE DECISION MAKERS AND ON MAKING THE ADJUDICATION PROCESS LESS DIFFICULT FOR BOTH THE VETERAN AND THE CLAIMS EXAMINER.

FINALLY, WE ARE IMPROVING THE TRAINING PROVIDED TO OUR DECISION MAKERS AND HAVE BROADENED THE SCOPE OF OUR TRAINING PROGRAMS. WE ARE REACHING A LARGER AUDIENCE BY INCLUDING NOT ONLY NEWLY-HIRED DECISION MAKERS BUT ALSO JOURNEYMAN DECISION MAKERS. OUR TRAINING METHODS, WHICH INCLUDE FORMALIZED CLASSROOM INSTRUCTION, VIDEO TRAINING GUIDES, TELEPHONIC CONFERENCES, AND ON-SITE TRAINING SERVICES, PROVIDE CONSISTENT INFORMATION, REDUCE THE DRAIN ON LOCAL RESOURCES, AND PROVIDE STRUCTURED TRAINING THROUGHOUT AN EMPLOYEE'S CAREER. OUR TRAINING PROGRAMS ARE CONTINUALLY MODIFIED IN RESPONSE TO CHANGES AND CHALLENGES AFFECTING OUR PROGRAM AREAS.

IN CONCLUSION, MR. CHAIRMAN, I WOULD LIKE TO REEMPHASIZE VA'S COMMITMENT TO ALL VETERANS. WE ACKNOWLEDGE THAT OUR CLIENTS ARE WAITING LONGER FOR DECISIONS ON THEIR CLAIMS, BUT THE QUALITY OF OUR DECISIONS, THE ASSISTANCE PROVIDED IN CLAIMS DEVELOPMENT, AND THE EXPLANATIONS OF OUR DECISIONS HAVE NEVER BEEN BETTER. WITH THE INITIATIVES I HAVE DISCUSSED, WE HOPE TO SHORTEN THESE DELAYS. WE WILL CONTINUE TO EXPLORE OPPORTUNITIES TO BETTER MANAGE THE ENTIRE ADJUDICATION PROCESS. WE LOOK FORWARD TO WORKING WITH YOU IN ACHIEVING THIS. I WILL BE HAPPY TO ANSWER ANY QUESTIONS THAT YOU OR MEMBERS OF THE SUBCOMMITTEE MAY HAVE.

JUDICIAL REVIEW CONFERENCE CALL
November 2, 1992

GARY HICKMAN

Good morning. I am Gary Hickman. We have a full agenda this morning. A brief reminder that the December Conference Call will be back on the regular schedule Thursday, December 3rd, at 11:00 a.m.

HEARING OFFICER HEARINGS ON APPEAL

Recently I have been advised (this came through the VFW Training Conference at the Williamsburg session a few weeks ago) that some confusion exists about scheduling hearings with an RO Hearing Officer after VA Form 9 has been filed

Although VA Form 9 has been revised to eliminate references to hearings before regional office personnel, beneficiaries may still request local hearings after VA Form 9 has been filed.

In many cases, Hearing Officers are able to resolve disputed claims favorably based on new and material evidence. If a hearing before a Hearing Officer is requested, regional offices can schedule a hearing with a Hearing Officer even if VA Form 9 has been submitted. Of course, if the veteran specifically requests on VA Form 9 a hearing before a Member of the BVA, that request also will be honored. In summary, a veteran may have two hearings before VA personnel on the same issue.

Next on our agenda is John Dun to talk about our decision assessment package.

JOHN DUN

Thank you, Mr. Hickman.

DECISION ASSESSMENT PACKAGE

Copies of last month's decision assessment documents recommending changes in policy, regulations, or procedures, and those raising significant points by the Court were E-mailed to all Regional Offices on October 28, 1992. The package contained 3 assessment documents, all involving Court decisions.

The Court cases are:

Pernorio v. Derwinski, U.S. Vet. App. No. 90-779. This case involves a claim for increase for a service-connected skin disorder which had been rated under various diagnostic codes. There were three holdings in this case:

1) The Board of Veterans Appeals applied a standard which exceeded that found in the relevant regulation when it implied that constant itching must be shown by excoriation;

2) Evidence concerning facial scarring was inadequately addressed;

3) The Board of Veterans Appeals failed to provide adequate reasons or bases concerning applicable diagnostic codes.

The Court noted that various diagnostic codes had been utilized to evaluate the veteran's skin condition, and that in such cases, the BVA should explain the diagnostic code it employs in terms of any different codes used previously.

Quarles v. Derwinski, U.S. Vet. App. No. 90-858. The issue in this case is entitlement to an earlier effective date for an increase in appellant's service-connected back disorder. The Court held:

1) That because of inadequate reasons and bases, it was unable to determine how the Board of Veterans Appeals chose an effective date for an increase in appellant's service-connected disability;

2) The Board failed to consider and address properly the impact of the veteran's pain on the severity of his low back disability under the provisions of 38 C.F.R. §§ 4.40 and 4.45f;

3) The Board did not provide reasons or bases for its findings and conclusions adequate to permit effective judicial review.

The Compensation and Pension Service has determined that the correct effective date is July 12, 1985, the date of appellant's reopened claim. All evidence submitted prior to that date had been considered by the regional office and the BVA, and the claims had been finally disallowed. Based on the Court's decision, it is imperative that reasons and bases for the selection of an effective date be stated whenever there is a question of the appropriate date.

Isenhart v. Derwinski, U.S. Vet. App. No. 91-1184. In this case, the Court held that as a matter of law, a claim for DIC shall be considered as a claim for death pension and a claim for death pension shall be considered a claim for DIC. In addition, claims for DIC and death pension shall also be considered a claim for accrued benefits. Under the provisions of 38 U.S.C. §§ 5101(b)(1) and 5103(a), VA is obligated to notify a claimant if an application is not complete and of the evidence necessary to complete the application. As appellant was not informed that her application was incomplete, the Court determined that an original claim for death pension remained pending because she was never informed of the disallowance of the claim. The BVA disallowance of entitlement to an earlier effective date was reversed and the appeal was remanded for readjudication. The point to remember is that when a VA Form 21-534 is received, it is a claim for three benefits: DIC, death pension, and accrued. If a decision is made which does not address all of these claims, it remains a pending claim.

Some of you may be wondering about which end product you are entitled to based on the Isenhart decision. As you are only entitled to one end product, a 140 or a 190, take a 140 when the issue of service connection for cause of death is raised by the claimant, or when the issue is disposed of by a formal rating decision. When the claimant indicates he or she is not claiming service connection for the cause of death, and review by the rating board is not required, take a 190, even though you must inform the claimant that service connection for the cause of death has been denied.

Are there any questions on these three cases?

If there are no questions I will now turn the microphone over to Brad Flohr who will discuss recent court decisions concerning "duty to assist" and Post-Traumatic Stress Disorder Development.

BRAD FLOHR

Thank you, John. Good morning everyone.

DUTY TO ASSIST

In a number of decisions of the Court of Veterans Appeals (the Court), VA's statutory duty to assist a claimant who submits a well-grounded claim has been detailed. While it may seem that we are always criticized for our failure to discharge our duty, there are cases where we are noted to have properly discharged that duty. I would like to offer one case today as an example, and the important point here is the Court's finding that our duty to assist was satisfied by asking the claimant to submit medical records from private treatment facilities regardless of the fact that the requested records were never received.

In Bourn v. Principi, U.S. Vet.App. No. 92-327, the Court noted that appellant served on active duty from August 1965 to August 1967. He contended that he was involved in a truck accident in Vietnam which displaced his knee caps and injured his back, neck, and arms; and that hot water scalded his right forearm and hand. Service records were negative for the claimed accident.

On April 23, 1991, after apparently attempting to obtain the records themselves, the regional office requested the appellant to submit treatment records from two private medical facilities and a private physician referenced in the claim. Appellant subsequently informed VA that records from the private physician were not available. While the record does not contain any medical reports from either of the private treatment facilities, the Court held that no violation of VA's duty to assist had been demonstrated.

PTSD DEVELOPMENT

We recently received a decision of the Court in the case of McNeely v. Principi, U.S. Vet.App. No. 90-1539 which deals in part with the development of Post-Traumatic Stress Disorder (PTSD) cases. It is useful as an example of how these claims should be developed, and how our decisions will be upheld by the Court if complete development action has been taken. In this case, the veteran served in combat in Vietnam and received wounds for which service connection was established at a compensable level under 38 C.F.R. § 3.324.

The initial claim for service connection for PTSD was filed in June 1988. The claimant requested that records be obtained from a Vet Center and these were immediately requested. He also was examined by a VA psychiatrist in July 1988. The veteran made complaints of intrusive memories of combat experience; witnessing friends killed; being irritable at home with his wife. He functioned okay at work with no flashbacks or nightmares reported. The psychiatrist reported that he did not meet the criteria for PTSD. An outpatient treatment report was noted to diagnosis adjustment disorder with depressed mood. A regional office decision denied service connection.

Subsequently, a letter from the team leader at the Vet Center was received stating that the veteran displayed symptoms of PTSD. The previous denial was continued. A Notice of Disagreement was received and a Statement of the Case was sent. On VA Form 9, the veteran requested another examination. A personal hearing was held and he again requested another examination. The Hearing Officer denied the request for reexamination citing the adequacy of the record. The denial of the claim was continued and the appeal was certified to BVA.

The BVA remanded the appeal in order to obtain service personnel records; complete records from the vet center; and an examination by a board of two psychiatrists. The records were received and an examination was conducted with the impression being "possible PTSD." The psychiatrists stated that psychological testing would be needed to further document the diagnosis. The psychological testing was done, and after a review, the psychiatrists made a diagnosis of dysthymic disorder. The rating board continued the denial stating:

> "While it is recognized that veteran has had combat stressors, the current psychological and psychiatric testing by the VA does not establish that the veteran has PTSD at this time. In addition, service connection is denied for a currently diagnosed dysthymic disorder, which was not found in service nor at the initial VA examination in 1968, but is of more recent development."

The BVA upheld the denial and the Court noted that there was a plausible basis in the record for the decision, given the opinions expressed in the reports of the panel of two psychiatrists and the clinical psychologist. The denial was affirmed.

Next, we have Judy Veres.

JUDY VERES

Good morning.

HEARING OFFICER DECISIONS

A question has been raised concerning Hearing Officer decisions in employee cases. Paragraphs 20 and 21 of VBA Circular 20-89-11, Revised, dated August 27, 1991 set out procedures for hearings involving employee cases. Currently, a hearing for an employee may be held by the station's Hearing Officer. After the hearing has been completed, the transcript and any new evidence is submitted to another Hearing Officer in another regional office for the lecision.

The Court of Veterans Appeals has held that assessments of the credibility of testimony must be made as part of VA's decision-making process. The best, and probably only individual, who can accurately assess the credibility of testimony is the Hearing Officer who held the hearing. The Hearing Officer who holds the hearing must make the decision. If, for good cause, the Hearing Officer at the local regional office or a Hub cannot conduct a hearing because of a conflict of interest or other reasons, another Hearing Officer capable of rendering a decision must be appointed.

I will now turn this over to Bob White.

BOB WHITE

Thank you, Judy. Good morning everyone.

TIMEFRAMES FOR APPELLATE REVIEW

In response to inquiries from veterans and others, it has come to our attention that some offices have been providing estimates as to the amount of time required for appellate review at the Board of Veterans Appeals. In addition, there is some indication that old FL 1-26's have been used by some offices indicating that review of the appeal by BVA will take 2 to 4 months. This has caused some frustration among veterans, either because they feel the quoted timeframes are too long, or because they have already waited longer than the quoted timeframe without receiving notice of a decision.

Because the timeframe for appellate review of individual cases is subject to so many variables, and because it can deviate widely from any estimated norm, regional offices should refrain from providing any estimates regarding individual or average timeframes for appellate review and they should insure that only current FL 1-26's (June 1990 or later) are used. Individuals who insist on getting such information should be advised to contact BVA directly.

QUESTIONER

Who is it that is directing this?

BOB WHITE

Would you repeat that question?

QUESTIONER

Who is it that's telling us we shouldn't tell them an estimate?

MR. HICKMAN

Is this Dave?

QUESTIONER

Yes

MR. HICKMAN

We are doing that in consultation with the Chairman.

QUESTIONER

Okay, thank you.

MR. HICKMAN

You're welcome.

BOB WHITE

RUSSELL/COLLINS

In the package of assessment documents sent to you last Wednesday, we included a copy of the Russell/Collins decision on the Court's jurisdiction to review claims of clear and unmistakable error. The decision should be required reading, not only for its discussion of what is necessary for a "valid claim" of clear and unmistakable error, but also for the practical applications of the decision in the cases of Mr. Russell and Mrs. Collins.

Our assessment document on this decision will be issued shortly, but I want to mention a couple of important points made in the decision before the anticipated influx of claims is received. Although further appellate review is under active consideration with respect to the jurisdictional issue in this case, the Court has provided some valuable guidance for adjudicating this type of claim; and, in any event, the Court clearly has jurisdiction over claims of clear and unmistakable error in decisions made after November 1988.

The Court has established several criteria that must be satisfied before there can be a "valid claim" of clear and unmistakable error:

(1) the claim must specify the factual or legal errors at issue unambiguously;

(2) it must assert more than a disagreement over matters of judgment;

(3) it must not depend upon favorable resolution of any non-adjudicative question (such as alleged errors of medical diagnosis);

(4) the contentions must be limited to the factual record which was previously before the Department;

(5) the arguments must be based solely on the law and regulations which existed at the time;

(6) the alleged error must be material to the outcome of the claim (that is correction of the error will alter the decision).

If any of these criteria are not satisfied, the claim of clear and unmistakable error is not valid and may be rejected on that basis. Such decisions are, of course, appealable. If the claim is valid, it must then be adjudicated on the merits.

The Court also defined a clear and unmistakable error as one which was undebatable and about which reasonable minds cannot differ. Therefore, the Court said:

> In view of this standard, the "benefit of the doubt" rule ... could never be applicable; an error either undebatably exists or there was no error within the meaning of [section] 3.105(a).

Please review these points when you receive the transcript of this Hotline and share them with claims representatives in your area so that everyone will be aware of what is required in the presentation of claims of clear and unmistakable error.

I have one issue that was not on the agenda that was sent to you last Friday.

QUESTIONER

I have questions on the Collins case.

BOB WHITE

Can you hold off for just a second?

QUESTIONER

Yes.

BOB WHITE

Last Wednesday the U. S. Court of Appeals for the Federal Circuit declined VA's request for en banc review of its earlier decision upholding the Court of Veterans Appeals decision in Fugere v. Derwinski. It now appears that we may not seek further review by the Supreme Court. We expect to receive that decision shortly. If we do not seek further review, an interim instruction letter will be issued directing review and restoration of previous hearing loss reductions that were occasioned solely by the change in Rating Schedule criteria. Rating Boards should move as quickly as possible to make those restorations if such instructions are issued.

I will take that question now on the Collins case.

QUESTIONER

What is the status of appeal on that?

BOB WHITE

We have Jack Thompson here from General Counsel. Jack

JACK THOMPSON

Yes, we've got until earlier December to file a notice of appeal in that case. We are in the process now of working up a recommendation. I can't tell you yet how its coming out. Our thoughts are just beginning to crystalize on it, but we will know within a couple of weeks, whether the Department will request that the Justice Department appeal the case.

QUESTIONER

Are we to implement the decision now, or hold off?

BOB WHITE

Hold off, please. [Note: The basic issue decided in Russell/Collins involved the Court's jurisdiction, but the Court also provided some guidance as to what will be expected in a "valid" claim of clear and unmistakable error. That guidance may be helpful to you, and you will receive instructions in the Decision Assessment Document which will be issued shortly.]

QUESTIONER

If the applicant sets up an argument that meets every one of those criteria, that is going to require us to go through a full decision, is it not?

BOB WHITE

Yes.

QUESTIONER

What kind of workload are we looking at here? Does anybody have any estimates?

BOB WHITE

No estimates. It could be significant, but we just don't know yet.

If there are no further questions at this time, I would like to turn the microphone over to Rich Frank, from the Board of Veterans Appeals, who has a follow-up statement to make on the issue discussed at the last hotline, concerning remands for opinions from medical doctors.

QUESTIONER

I do have one question, before you go?

BOB WHITE

Okay, John

QUESTIONER

What is the status of the Gardner case?

BOB WHITE

Oral arguments are scheduled for November 9, at the Court of Appeals for the Federal Circuit, so its still under review.

QUESTIONER

This is Bill Leonard in Nashville. Can I ask a question on the Collins case?

BOB WHITE

Sure, Bill.

QUESTIONER

It used to be that when a veteran alleged error on fact or law on a BVA decision that we would send that directly to the BVA. It is my understanding that we are not going to do that anymore.

BOB WHITE

That is correct. If the allegation is clear and unmistakable error in a BVA decision, the proper avenue is to request reconsideration by the Chairman. Regional Offices do not have jurisdiction to entertain that issue.

QUESTIONER

Bob, what if the issue is clear and unmistakable error in a VA decision prior to the BVA decision. Would that still go to the BVA?

BOB WHITE

This is a claim of error in an RO decision that has been affirmed by BVA.

QUESTIONER

Yes, sir.

BOB WHITE

You don't have jurisdiction of that either. The RO decision was subsumed by the BVA decision.

QUESTIONER

Thank you.

BOB WHITE

Now here is Rich Frank.

RICH FRANK

Thank you, Bob. As Bob indicated this is a follow-up to the question that was asked during the October Hotline.

SOLICITATION OF MEDICAL OPINIONS ON ADJUDICATION ISSUES

Certain decisions of the United States Court of Veterans Appeals have remanded cases with orders for the Department of conduct examinations of veterans. In a few instances, these orders issued by the Court have also included a directive that the physician offer an opinion on an ultimate adjudicative question, such as whether a disorder was incurred or aggravated in service. Other decisions have directed that the examiner, pursuant to 38 C.F.R. 4.10, provide a "full description of the effects of disability upon the person's ordinary activity," including an opinion on how the disability effects industrial adaptability. Where such orders are issued by the Court, the Board must comply, or the Secretary's representatives must file a motion for reconsideration seeking modification of the Court's order.

It has been and remains the policy of the Board that great care should be exercised in framing questions involving adjudicatory matters for responses from VA medical providers. There are two reasons for this policy.

First, the VA both delivers medical care and administers a compensation and pension benefit system. Those VA employees who deliver medical care should not be placed in a situation where there is, or there may be perceived to be, a conflict of interest, or a breach of the doctor-patient relationship, in matters relating to a claimant's medical needs and his or her claims for compensation or pension benefits.

The second reason for this policy is that most adjudicative issues relating to compensation and pension claims ultimately involve findings of fact that are not matters of medical expertise. For example, where a claim for service connection for a disorder turns upon a question of whether there was a continuity of symptomatology, it is for the adjudicator - not the provider - to assess the credibility and probative value of testimonial or other lay evidence as to continuity of symptoms, and to weigh this evidence against the documentary evidence of record.

The general policy at the Board is that questions posed to medical providers should not go to ultimate adjudicative questions. This policy is consistent with the Physician's Guide for Disability Evaluation Examinations [Department of Veterans Affairs, March 1, 1985], which states:

> The examining physician should avoid any expression of opinion regarding the merits of any claim or percentage evaluation of disability.

That's at page 1-5 [emphasis in original].

Under the regulations and the case law, providers must review the history of the disability, including the history as provided by the claimant, and must accurately and fully describe the symptoms of the disorder with emphasis upon the limitation of daily activity imposed by the disabling condition. That's, of course, from 38 C.F.R. 4.1, 4.10. They may properly be asked to comment on whether there may be an etiological relationship between symptoms shown in the service medical records and current disability. They should not be asked to resolve factual questions that are not matters of medical expertise - such as, for example, whether an event asserted as a "stressor," in a claim for post-traumatic stress disorder, is established by the record (Wood v. Derwinski, 1 Vet. App. 190, 193 (1991)).

Where resolution of a claim involves medical opinion that goes to ultimate adjudicative questions, such an opinion should be secured from physicians, or other experts who are not directly involved in providing care (such as the Chief Medical Director, an Independent Medical Expert or a medical consultant at the Board).

This area was recently the subject of an extensive discussion at a convocation of the Chairman and the Board Members, and I mean all of the Board Members. The general policy of the Board was reviewed in detail. In addition, efforts are now underway to routinely assure that motions for reconsideration are filed by the Secretary's representatives in response to Court orders where a medical opinion is sought from a provider on an ultimate adjudicative issue. We hope by this policy to educate the Court on the reasons for the policy that the Board has followed over the years, and to get them to agree that is a sound approach to this particular area.

Let me just elaborate on a couple of points. First of all, I would emphasize that the Board is always happy to listen to questions such as this coming from the field and to provide you with considered responses. I must emphasize, however, that under the Veterans Judicial Review Act they are living in entirely a new world. It is a much more difficult world, both for the Board and very much so in the field, and we do appreciate that - much as we very much appreciate your efforts on our behalf.

We now live in a world in which there are many, many questions (that are now what lawyers would call "questions of first impression") in areas of what used to be considered settled policy. We have to take these one at a time, and as they come up Board Members attempt to thrash them out.

I must emphasize also that Board members, under the statutes, exercise a timing in decision-making, and they are trying to exercise their best judgment in accordance with the law, regulations, the precedent opinions of the chief law officer of the Department, and, of course, the case law coming from the court.

I can anticipate that there will be one further question in this area. Those cases which have already reached the field in which there are requests (for what could be construed as opinions from treating physicians on ultimate adjudicative questions) - we're going to let rest in the field at this time. We hope respectively, however, to make sure that we don't get into these areas again, unless we are so directed by the Court and we have been unsuccessful in providing for reconsideration of that Court Order.

Thank you.

BOB WHITE

Are there any questions from the field on anything that has been presented today?

QUESTIONER

I want to go back to the third assessment document. It says that M21-1 should be changed. [Tape indecipherable] from the testimony of the Senate hearings on Judicial Review, that we would never say that something should happen in the future, except when the manual was held to be invalid rule-making. What does this tell us? Do we ignore M21-1 and go with the Court decisions?

JOHN DUN

[Tape change. The response was that the procedural guidance contained in an approved Decision Assessment Document is for immediate implementation by regional offices.]

QUESTIONER

The information on providing estimates on a timeframe to the field process - do you provide this information to the Veterans Service Division, because they often give that information out with contacts to the claimant?

GARY HICKMAN

We will do that.

QUESTIONER

Thank you.

QUESTIONER

This is Houston. Do all of our death pension applications require rating action [as to service connection for cause of death]?

JOHN DUN

No, they do not.

QUESTIONER

Use the current criteria?

JOHN DUN

Yes. You do have to deal with the [service-connected] issue, that's what the instruction is.

QUESTIONER

Paul Issing, Washington Regional Office. Then does Isenhart hold that it's a plausible claim or it's not a plausible claim?

JOHN DUN

Would you put your question more fully? I'm not sure I am understanding what your question is.

QUESTIONER

If we get a 534 that claims service-connected death and provides no income data - without that income data is it a plausible claim or not a plausible claim? The assessment document (or the quote from the Court, I guess it is) does not mention "duty to assist"; it says "refrain from awarding benefits," and does not say "will decide it" in a particular way. If we ask for the information, and it doesn't come in, under what jurisdiction do we deny the claim?

JOHN DUN

Let me back-track here. What the Court has said, is that it is a claim by law and - separate from your to duty to assist - if it is an incomplete application, that is it doesn't contain the income information, you are required to go out and get it, to basically develop that information. And then if there is no response, of course, you can deny the claim. [See the addendum for clarification of this point.] It's not really a duty-to-assist question. It's a separate statute that deals with development of applications which are incomplete, and in this particular case, unlike any other, we have the statute telling us what the application must be considered for. Does that answer the question at all?

QUESTIONER

I recognize that it doesn't say "duty to assist." My point is, if it's not a plausible claim we go into that other law that says we need to tell the claimant what they need to do to perfect the claim. If they don't perfect their claim, then it does not require a substantive denial.

JOHN DUN

Oh, I see what you mean, if there is no response?

QUESTIONER

Correct.

JOHN DUN

Okay, so basically we've sent out for information - and they haven't responded - do we need another letter, is what he is saying.

QUESTIONER

The Court has not given me any claim definition, because they haven't discussed "duty to assist." If it doesn't meet the "plausible claim" [definition] we meet our duty by telling them we need it; if they don't send it in, then I don't see any additional action is required on our part.

JOHN DUN

It's an abandoned claim, that is what you are talking about.

BOB WHITE

[See Addendum to this transcript.]

QUESTIONER

All right. Thank you.

QUESTIONER

To continue that discussion: can a claimant exclude a particular benefit? We occasionally get a claim (534's) with the income section crossed out saying DIC only. Do we have to address pension?

JOHN DUN

That is the point of the Court's decision, is that we can no longer do that [i.e., fail to address pension].

BOB WHITE

The 534 is a claim for three benefits as a matter of law, and you have to give them an answer on all three.

QUESTIONER

Since they have stated they excluded that, we could give them a decision "in accordance with your request," and we don't have to go out and develop it again do we?

JOHN DUN

I think - just start out with this as a claim here. If part of it is intentionally or unintentionally incomplete, you are going to have to write to the beneficiary to tell [her] that. If [she] doesn't respond on that development, then [she] is abandoning [her] claim, and you're finished with it. If [she] does respond, then you give [her] a substantive decision, I believe. [See addendum for clarification of this point.]

QUESTIONER

I find it hard to believe that the Court ruled that if they specifically said they do not apply for that benefit we have to go out and develop.

JOHN DUN

Well, the problem with that - I know you find it hard to believe, I am sure you're not the only one - but the problem is that they are reading the law, and when the Congress has said how these things will be construed, the point of the Court decision is that nobody else has a choice: not the claimant, not the Department - so, we don't have a choice in this matter.

QUESTIONER

The case in point here is one where the claimant specifically noted on the application?

GARY HICKMAN

Paul, in this particular case the claimant crossed out anything dealing with income.

QUESTIONER

All right, then can't we just consider it based on that statement, and say without evidence - we are going to look kind of funny going out and developing information for which the claimant has already said they are not going to provide.

GARY HICKMAN

I think that is what John just alluded to, the fact you make your decision based upon what you have; and then if they decide to come back in and provide additional information, we will make a substantive decision.

QUESTIONER

Okay to that answer, Gary. I think that is different then before. Before I understood it said we had to go out and attempt to develop that information even though they said they were not going to provide it. What you just said is: based on the information they told us they are not going to provide, make a decision.

GARY HICKMAN

[See Addendum to this transcript.]

QUESTIONER

Good. Thank you.

QUESTIONER

Ivers.

GARY HICKMAN

Go ahead, Tim.

GARY HICKMAN

You're breaking up, we can't hear you. Can anyone hear, pass on the question? Are there other questions?

QUESTIONER

This is Courtney in St. Louis on Russell/Collins.

GARY HICKMAN

Go ahead, Pat.

QUESTIONER

If I understand it correctly, you said that there are basically six requirements that have to be met, and if they are not met (I think Bob used the language) that claim would be not valid and rejectable. Could we use the "not well-grounded claim" in making that decision?

BOB WHITE

Pat, "not well-grounded" goes to whether or not we have a "duty to assist." I think the Court has coined a new phrase here, called a "valid claim," because there really is no duty to assist in a claim of clear and unmistakable error. We have to look at the prior decision and adjudicate it on the facts as they existed then, so there is no duty to assist in developing facts, and we have to adjudicate it under the laws and regulations that existed at that time. So, they steered away from the "well-grounded" claim terminology and used the term "valid claim." I think if a claim does not satisfy those six criteria, the answer to the claimant should be that: a valid claim of clear and unmistakable error [was not submitted]. That would be the basis for denial.

QUESTIONER

Where is that in the regulations?

BOB WHITE

It's in the Court decision, not the regulations.

QUESTIONER

This is Muskogee.

BOB WHITE

Go ahead.

QUESTIONER

[Concerning the] Isenhart case, could I ask one more question? What if we've got a claim for DIC only and it's obvious [that the death will be found] service connected. Are you wanting us to develop for income up-front on every one of these cases or can we - whenever the decision is made by the Rating Board to deny it - deny DIC, and then tell them if they want to apply for pension to complete and return the enclosed form?

JOHN DUN

Your talking about when we're going to address this issue. I think we should just respond to that in the addendum to the hearing transcript.

BOB WHITE

That will be out shortly.

GARY HICKMAN

For those who tried to ask questions, but due to technical difficulties you were unable to do so, you can E-mail your questions in, and we will make that part of the transcript as well. [Note: the addendum responds to questions which were subsequently submitted, including those raised by Mr. Ivers.] Any other questions?

QUESTIONER

This is Skip Hills from St. Paul. In the Russell v. Collins case, what's the pertinence of ICC v Brotherhood of Locomotive Engineers?

GARY HICKMAN

I don't have the case in front of me at the moment. I don't know if anybody here - I think Rich may be able to answer that one, Rich Frank.

RICH FRANK

In the argument before the Court, the question of Russell and Collins was principally was one of 3.105a in its application to RO determinations. They did creep into the area of determinations by the Board of Veterans Appeals, and the submissions by the Secretary's of representatives had cited ICC v Brotherhood of Locomotive Engineers for the proposition that certain types of reconsideration motions (which are discretionary) are not reviewable by an appellate Court. That was import of ICC v. Locomotive Engineers. The Court in Russell and Collins, however, rejected that as an appropriate authority in this case, because the Board's statutory provision concerning reconsideration is not discretionary, it is mandatory, and also 3.105a is also mandatory (it does not say you may or may not correct a clear and unmistakable error, it says you must correct a clear and unmistakable error), and that is where Locomotive Engineers came in .

GARY HICKMAN

Thanks, Rich.

QUESTIONER

This is Paul Issing again, on the Russell/Collins case. When you said before that cases that [we don't have jurisdiction over cases which] had been previously been decided by the Board of Veterans Appeals - if we start sending all these claims to BVA, are they going to turn around and send them right back to us, and if so is there some way we can short-circuit that?

GARY HICKMAN

We do not want you to send them to the BVA. Rich wants to make a comment.

RICH FRANK

Basically, I believe that the appropriate response (when an individual submits a claim at the regional office level alleging clear and unmistakable error in a Board decision) is to simply advise [that individual] by letter that there are procedures provided for seeking reconsideration from the Board of Veterans Appeals, and that that is where they should file their claim. Certainly there is no provision in the Rules of Practice of the Board that provides that the regional office must forward such claims to the Board: the appellant must take those motions for reconsideration to the Board himself or herself and it will be resolved at the level at the Board.

QUESTIONER

I'll change my question. If we give them the procedures for filing the request for reconsideration at BVA [and] if they do file such a thing, is BVA going to send them back to the regional offices?

RICH FRANK

Well, in the abstract, a request for reconsideration is for reconsideration of a Board decision, and that normally is a reconsideration of a decision entered based upon the factual record as it then stood, and based upon the law and regulations as they then stood. Accordingly, in the vast majority of reconsideration decisions there is not going to be any basis for the Board to send the case back for appeal. We do have a provision on our rules of practice for remanding decisions on cases that are on reconsideration under certain circumstances. The number of instances, however, in which that is done is very limited, at this time, and I would anticipate that it would continue to do so.

GARY HICKMAN

Other questions? If not, then we will conclude this conference call. Thank you.

Addendum

Judicial Review Conference Call Transcript (11/2/92)

Isenhart v. Derwinski, U.S. Vet. App. No. 91-1184 (9/3/92)

I. General considerations

This addendum is intended to clarify instructions issued to regional offices concerning proper interpretation and implementation of the Court's decision in Isenhart.

In substance, the Court has held that VA Form 21-534 is a claim for three benefits by law, and that each issue - DIC, death pension, and accrued - must have been fully adjudicated or abandoned before a decision on that claim will become final.

The law does not give the VA an option to limit its consideration to the benefit which is apparently sought by an applicant (e.g., DIC only). The Office of General Counsel advises that a claimant may not elect which benefits will be adjudicated, since the beneficiary would not be "estopped" from taking a contrary position in the future (that the claim remained pending with respect to issues which were neither adjudicated nor abandoned). In this vein, the Court has previously rejected an equitable-estoppel argument raised by VA ("laches," see Manio v. Derwinski, 1 Vet. App. 144 (1991)).

There are six possible claims-processing situations which may arise, depending on how VA Form 21-534 is completed by an applicant. Entitlement to accrued must be considered in each case, however, and disallowance is mandatory if there is no entitlement (the procedures for disallowance are described in M21-1, Part V, Chapter 8).

II. Processing VA Forms 21-534 when block 11b is marked "yes" (Service-connected death alleged)

Assume initially that the applicant believes the death is service-connected and provides either (1) full, (2) partial, or (3) no income and net worth information.

If service-connection for cause of death is alleged and full income and net worth information is provided, the case must be fully developed and, ultimately, the adjudicator will notify the beneficiary concerning DIC, death pension, and accrued benefits. If it is determined that there is entitlement to both DIC and death pension, the adjudicator will pay DIC and advise the beneficiary of entitlement to the lesser pension benefit (38 CFR § 3.701).

When relevant to a potential award or disallowance of death pension, complete income and net worth must be developed if only partial information was provided. The adjudicator will then notify the beneficiary concerning entitlement or nonentitlement to pension based on the evidence developed, or disallow death pension due to failure to submit requested evidence. In addition, the adjudicator will notify the beneficiary of entitlement to DIC and accrued, and the right to elect between DIC and death pension (if applicable).

In cases where income and net worth are not pertinent to an award or disallowance of death pension (e.g., no qualifying service), partial or complete omission of this information from VA Form 21-534 does not render the application materially incomplete. In this situation, the claimant should be advised of nonentitlement to death pension when DIC and accrued are addressed.

When income and net worth would be pertinent to an award or disallowance of death pension, complete omission of all relevant data from the application means that the claim is not well-grounded in that regard. In this situation also, the claimant should be advised of nonentitlement to death pension when DIC and accrued are addressed. The adjudicator should inform the applicant that death pension has been disallowed because evidence of income and net worth is necessary in order to establish possible entitlement. The applicant should be invited to submit the information if further consideration is desired, and should be reassured that the pension disallowance will not become final if the necessary evidence is submitted within one year.

II. Processing VA Forms 21-534 when block 11b is marked "no" or blank (Service-connected death not alleged)

The remaining three claims-processing situations involve cases in which a claimant does not allege that the death is service-connected and provides (4) full, (5) partial or (6) no income and net worth information. The Isenhart decision does not require any change in existing procedures for consideration of DIC in these situations (see M21-1, Part II, Chapter 3), and the guidance previously outlined applies when income and net worth information is either incomplete or omitted.

III. Processing VA Forms 21-535

While the Isenhart decision does not address DIC claims filed by parents under 38 U.S.C. 5101(b)(2), that statute also requires consideration of accrued benefits. We issued similar procedural guidance for all original death claims in the Isenhart assessment document based on our current reading of this law.

IV. Processing VA Forms 21-526

Neither the law nor Court precedent mandates consideration of disability compensation claims as claims for disability pension, or vice-versa. By regulation, the Secretary has provided that a claim for compensation may be considered a claim for pension, and that a claim for pension may be considered a claim for compensation (38 CFR 3.151(a)). Since this regulation is permissive rather than mandatory, a veteran may elect to apply for one benefit or the other, and we will continue to develop entitlement to the benefit(s) actually claimed. We will issue further guidance to Regional Offices if a new Court precedent or a change in regulation requires a different procedure.

JUDICIAL REVIEW CONFERENCE CALL
May 6, 1993

BOB WHITE

Good morning. This is Bob White. I'm happy to report that Rick Hirst and I have finished, at least for now, our traveling seminars on special rating issues and the impact of the Court of Veterans Appeals. Our travels took us to 12 training sites where we had the pleasure of speaking directly to Rating Specialists, Hearing Officers, supervisors and managers from 40 regional offices. By most accounts the training was well-received and I know Rick and I enjoyed meeting and talking with you on our visits. We expect this method of training will be used again in the future to present additional topics of special interest.

On the issue of clear and unmistakable error, I mentioned at the training sessions and in prior hotline announcements that, when such claims are made against BVA decisions or against RO decisions that were affirmed by BVA, the correct action would be to refuse jurisdiction of the issue and refer the claimant to the procedures for requesting reconsideration by BVA. Such action was an attempt to defer action on such claims while the **William A. Smith** case (U.S. Vet. App. No. 91-871 (10/22/92)) was being appealed to the Federal Circuit and, at the same time, to provide some assistance to the claimant with respect to the established method for challenging a BVA decision on the basis of error.

It now appears that further discussions were held while I was on the road and based on the advice of General Counsel it now appears that the correct action in such cases is deferral of all action on that issue, in accordance with the procedures announced in the **Tobler** decision (2 Vet. App. 8 (1991)), and recording the case on a log or register for future action when the **Smith** appeal is resolved. That is all I have to say on that issue.

On one other issue, we just received a decision on **Paul R. Hayes** (U.S. Vet. App. No. 90-1306 (4/28/93)). It is an excellent recitation of how to handle Post-Traumatic Stress disorder claims, both with regard to development of stressors and to acceptance or challenge of a diagnosis, even when made by our own medical staff. I am having that decision transcribed into a word processing format, and I will have that attached as an addendum to the transcript of this hotline. I encourage all Rating Specialists and Hearing Officers to read it - it's a good example to follow.

With that, I'll hand the mike over to John Dun for discussion of the assessment package.

JOHN DUN

Thank you, Bob.

DECISION ASSESSMENT PACKAGE

The April assessment package involved 7 Court decisions:

Brown v. Brown, U.S. Vet. App. No. 91-1388 (3/2/93). All of the evidence supported individual unemployability. Since only speculations about potential employability had been cited in the reasoning, the denial was considered unsupported.

Cook v. Brown, U.S. Vet. App. No. 91-1535 (2/23/93). A history of successful employment and personal relationships does not mean that no psychiatric disorder was present, and is not pertinent to findings of continuity for purposes of direct service connection. In addition, presumptive service connection is not precluded for a chronic disease based on the time lapse between initial symptoms and a final diagnosis if there has been continuous treatment.

Salgado v. Brown, U.S. Vet. App. No. 91-826 (3/3/93). The Court determined that ratings are protected under 38 U.S.C. § 110 whether or not monetary benefits have been elected, and that it may defer to agency interpretations only when the law is unclear. Brad Flohr will discuss application of this decision during his presentation.

Van Hoose v. Brown, U.S. Vet. App. No. 91-1645 (3/11/93). This appeal concerned individual unemployability. The Court observed that there must be some factor other than a high rating to establish entitlement, and that the question involves whether or not the veteran is able to perform required activities.

Leopoldo v. Brown, U.S. Vet. App. No. 90-612 (2/19/93). The Court held that the term "disability" signifies a disease, injury, or other mental or physical defect, and that compensation is not authorized for post-service aggravation of a nonservice-connected condition.

Fisher v. Principi, U.S. Vet. App. No. 91-1816 (1/14/93). The Court held that there may be factors affecting potential extra-schedular entitlement when percentage requirements for individual unemployability are not met. The administrative issue of referral to the Director, Compensation and Pension service, must be addressed in such cases, and adverse decisions

may be appealed. For this reason, the provisions of 38 CFR §§ 3.321(b)(1) and 4.16(b) must be addressed whenever [percentage requirements are not met and entitlement to] individual unemployability is denied.

Dobson v. Brown, U.S. Vet. App. No. 91-1136 (3/30/93). In helpless child claims, the Department must first evaluate permanent incapacity for self support at age 18 without regard to subsequent history. If the determination is favorable, helpless child status is established. The Department may then consider subsequent evidence of improvement in the child's condition to terminate helpless child status if the claimant is no longer incapable of self-support.

Are there any questions concerning these cases?

Okay, next up is Judy Veres concerning attorney fees from past-due benefits.

JUDY VERES

Good morning.

ATTORNEY FEES FROM PAST-DUE BENEFITS

On April 8, 1993, the Court issued a decision in a case called **In the Matter of the Fee Agreement of William G. Smith et al.**, U.S. Vet. App. No. 91-1058. The Court's ruling affects those cases in which a regional office mistakenly paid the entire fund of past-due benefits to a claimant. Notwithstanding VA's failure to withhold twenty percent of the past-due benefits pending a decision by BVA regarding the attorney-fee agreement, the Court stated that the VA has a statutory obligation to pay the attorney his or her fees. The Court also indicated that it saw no barrier to the VA creating an overpayment against the veteran's account for the amount of funds paid to the attorney. VA has filed a motion to have the panel decision stayed and reviewed by the full Court. In the meantime, the instructions in paragraph 23h of VBA Circular 20-92-14, dated May 29, 1992, have been rescinded. [Also, in Exhibit A, on page 21 of the circular, delete the last paragraph.] If any cases are discovered in which the veteran was paid the entire amount of past-due benefits without withholding the attorney's fees, please contact the Judicial Review Staff for further instructions. You may contact this staff via WANG E-MAIL (MAIL VBA 21 JUD REVIEW) or on FTS 8-202-233-8145. Are there any questions, if not I will turn this over to Brad Flohr to talk about location of claims folders.

BRAD FLOHR

Thank you, Judy. Good morning everyone.

LOCATION OF CLAIMS FILES IN APPEALED CASES

We have been advised of some confusion concerning the location and availability of claims files in cases which are appealed to the Court.

As was stated in our assessment of the Court's decision in Genous v. Brown, U.S. Vet. App. No. 91-1433 (1/26/93), upon notification that an appeal to the Court has been filed, the Office of General Counsel (OGC) requests the claims file from the regional office having jurisdiction. The claims file is referred to the Board of Veterans Appeals (the Board) for designation of the record. Upon return from the Board, OGC makes copies of the pertinent record for transmittal to the Court. The claims file is retained by OGC until a decision by the Court is made on the appeal. If the appeal is remanded, the claims file is forwarded to the Board. If the appeal is summarily affirmed or dismissed, the claims file is returned to the regional office of jurisdiction. At no time does the Court have physical custody of the claims file. It would, therefore, be inappropriate to advise a claimant or anyone else that a file had been temporarily transferred to the Court. Please ensure that appropriate individuals in other divisions at your station which have direct contact with veterans or their representatives are aware of the claims file's location in cases appealed to the Court.

We have been advised by OGC that once the Record on Appeal has been transmitted to the Court, the claims file may be released to the regional office upon specific request. Should you have need for a claims file which has been temporarily transferred to OGC for appellate action, please send a FAX request along with a brief explanation of the reasons for needing the file to the attention of Ms. Peggy Hall (027P) at FTS 202-233-6565. If the appellate process is at a stage where the file can be released for regional office review, it will be temporarily transferred back to the RO for that specific purpose. We want to emphasize that this is not to be considered a replacement for the procedures contained in M21-1, Part II, par. 4.18. When a file is transferred to OGC, you should continue to maintain a temporary file with copies of any material which might be needed for claims processing.

SALGADO V. BROWN

On March 29, 1993, a letter was E-mailed to you concerning the Court's decision in Salgado v. Brown, U.S. Vet. App. No. 91-826 (3/3/93). This decision held that the protection afforded by section 110 of title 38 of the United States Code applies to ratings for compensation purposes whether or not a veteran elects to receive a monetary award.

We are receiving requests on the retroactive effect of Salgado. Unfortunately, we cannot provide you with a complete and definitive answer today. Therefore, when you encounter a claim which falls under the Salgado umbrella, the effective date for benefits or restored benefits will be the date of claim. The issue of potential entitlement to an earlier effective date should be shown under rating code 38. After you have processed the claim, please E-mail the name and claim number and the type of benefit involved to MAIL VBA 21 JUD REVIEW. We will maintain a list of the cases in which there is an issue of potential retroactive effect, and we will advise you further after discussions within the C&P Service and with OGC.

Are there any questions on these two issues?

If not, I will turn the microphone back over to Bob White.

BOB WHITE

Okay, thank you Brad.

Rick and I are here, and we know you're out there, because we were out there and we talked to you and we saw you. Are there any questions from the field on any judicial review matters?

NEWARK

Hi, this is Newark concerning the Brown case. You indicate that there must be evidence of employability (the Court indicated that) before we can deny. Should we ... to show evidence of employability?

BOB WHITE

You broke up at the end. Was the question "what do you need in the way of evidence of employability"?

NEWARK

Yes.

JOHN DUN

The point in **Brown** is that you have to rate based on evidence rather than conjecture. The particular language that has been objected to in **Brown** went like this:

> No doubt, jobs which require long standing or walking are still infeasable. However, many occupational endeavors, including sedentery employment, will appear to be within his capability....

The Court said that this kind of reasoning is insufficient to show that the man is not unemployable. If you don't have any contrary evidence, the proper disposition would be to grant the claim in that kind of situation, and that is what the Court did.

BOB WHITE

This is in the same nature as....

NEWARK

... total unemployability. For example, a man with a three year college education may not be employed as a steel worker, but I think he can handle a job as an claims examiner, if he's got a 60% heart condition.

BOB WHITE

Yes, Casey, but that's what you think - and you don't have any evidence to support that rationale. There are some people with that amount of college education who can't because of their heart conditions. I think you would be making a mistake if you just try to make that judgment without facts to support it.

NEWARK

But what facts do we need to support that?

JOHN DUN

Well, one of the things that you could do is to ask the individual what sort of employment he has applied for, and find out what the factors were in terms of his trying to obtain employment or being rejected - this would broaden the evidence. You could also possibly ask an examiner to comment, on the limitations that his condition would have on particular forms of employment, to broaden the base.

NEWARK

... VOC Rehab employability counseling session to determine if VOC Rehab says he can or cannot.....

BOB WHITE

No, I don't think you can refer to VOC Rehab for that purpose. I think we had that issue come up before, when the Board of Veterans Appeals tried to do that by remand. They said that they have neither the statutory authority nor the expertise nor the funds to do such counseling. That was their call on that one.

LITTLE ROCK

This is Little Rock. Can the VOC Rehab specialists just review the medical evidence of record to make that determination, without calling the claimant in for an eligibility consultation process?

BOB WHITE

Based on our discussions with VR&C Staff here, I think the answer is "no" to that, and that's a matter of (I believe Jim Reed referred to that as) the "expertise angle."

LITTLE ROCK

What do you suggest we do then to determine the unemployability status?

JOHN DUN

Well, I suggest that if you have a case in which you feel you have an inadequate record, and you are at a loss to determine how to proceed, that you give us a call so we can discuss the specifics of that case, and perhaps come up with some method that would enable you to make sure that you have all the pertinent evidence that you need to make a decision, one way or the other, whether it's a grant or denial.

WINSTON-SALEM

Bob, John Bartruff.

BOB WHITE

Okay, John

WINSTON-SALEM

It sounds to me like were not going to have any objective evidence of unemployability that's going to pass any kind of a test. Everything is going to wind up in a perception or some kind of conjecture. It's almost like we're rolling over and giving code 18 anytime the veteran alleges he can't work.

BOB WHITE

I don't think that's the case. Why don't we address this issue seperately, and attach a statement to the transcript of this hotline.

MILWAUKEE

Hi Bob, Doug Wallin in Milwaukee.

BOB WHITE

Okay, Doug.

MILWAUKEE

Getting back to the VR&C participation, just briefly - and I realize what VR&C has said - but who better to have expertise on employability than a division which is tasked with putting people back to work?

BOB WHITE

We'll cover that one too. Gary says, well cover that one too, and we'll get input from the VR&C Staff here.

RENO

Bob, Steve from Reno. On the clear and unmistakable error issue, you said defer and wait for a resolution of the **Smith** case? What kind of notification do we provide to the inquirer?

BOB WHITE

I think it would be sufficient to say that the case has been recorded for future action, that the issue is pending appeal at the Court of Appeals for the Federal Circuit, and that additional action will be taken as soon as the appellate review has been resolved.

Are there any other questions?

HARTFORD

I've got a couple questions on the possible ramifications of Salgado. In Salgado, a particular set of facts are such that the VA routinly confirmed the 50% disability rating over a course of 20 years. Do we apply Salgado in situations in which no such confirmation by rating took place over 20 years? What I have in mind is a situation in which a veteran files an original claim for compensation, is given a disability rating, and is scheduled for a routine review examination. Because he never elects VA compensation, either a master record is not created - and, therefore, we do not have a diary established for routine review examination - or a master record is established, but for whatever reasons the review examination is never accomplished. If the veteran comes in 20 years later and says "I want my 100% disability rating," is he entitled to it?

BOB WHITE

If the rating has been in effect for 20 years, and there is no indication of fraud, the answer is "yes," he is entitled to it. We are working on some Manual procedures right now, to assist in preventing something like that from occurring in the future, so just hang on for a couple of weeks and we'll get something out to you. But the answer to your basic question is "yes," the case is protected.

HARTFORD

Will the same thing happen in situations in which a veteran fails to report for a routine review examination, and we simply put out a sheet saying "failure to report - no static disabilities or protected evaluations" and he abandons the claim? We don't do a rating reducing him from, say, 50% to 0% - that 50% rating stays in the file. Is it protected?

BOB WHITE

In your fact situation, was notice provided to the veteran that we had declared his rating not static and, therefore, it was like under code 40, evidence insufficient to evaluate?

HARTFORD

As I understand it, the routine procedure is that the Rating Board will put a notice on the C-file (failure to report for examination, no protected disabilities or static evaluations), and Authorization sends out a letter that we propose to terminate compensation payments based on failure to report. I don't believe that the letter, as presently constituted, states anything about changing the disability rating per se.

BOB WHITE

The feeling here is that, unless notice was provided that the rating was reduced, protection would accrue.

HARTFORD

One last thing, Bob, an another matter. This has to do with Isenhart v. Derwinski and the duty to assist. When we get VA Form 21-534 from a claimant, does that automatically mean that the case must go to the rating board for review of service medical records - which I assume would be routinely requested, in any case, since the claim is automatically considered a claim for service-connected death benefits?

BOB WHITE

John Dun is going to give you an answer on that one.

JOHN DUN

The point of Isenhart really had to do with the pension and accrued parts of the claim, which were not even being addressed. We have not changed our administrative procedures for dealing with service connected claims at all. As a matter of fact, we were considering these claims as claims for service connection anyway, and would make an administrative notation on the award that DIC was denied administratively in cases where it hadn't been specifically alleged. So there's no change in the existing manual guidance on how to deal with service connected aspects of a 534. If they check "yes", that certainly means that you go and get the service records and refer those into the rating board. If they check "no", and there is no indication otherwise of entitlement, I believe you can still use the administrative procedure.

BOB WHITE

Are there any other questions?

WICHITA

Dennis Harvey in Wichita.

BOB WHITE

Go ahead, Wichita.

WICHITA

Salgado v. Brown - how is that going to apply to veterans who go back on active duty?

BOB WHITE

That's one we're trying to work out. Did you call that in the other day, or was that another station?

WICHITA

Somebody else.

BOB WHITE

Okay. The question is out there and we have to deal with that. We'll get back to you on that one.

This was a very nice, active group today and I want to thank you all for participating - they were good questions. If there are no further questions we will close now. The next scheduled hotline is June 3. Thank you all for attending today.

STATEMENT OF

BOB MANHAN, ASSISTANT DIRECTOR
NATIONAL LEGISLATIVE SERVICE
VETERANS OF FOREIGN WARS OF THE UNITED STATES

BEFORE THE

SUBCOMMITTEE ON COMPENSATION, PENSION, AND INSURANCE
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES

WITH RESPECT TO

AN OVERSIGHT HEARING ON TIMELINESS AND QUALITY OF CLAIMS PROCESSING

WASHINGTON, D.C. APRIL 21, 1993

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

Thank you for inviting the Veterans of Foreign Wars (VFW) to participate in your hearing this morning. Our 2.2 million members have a vested interest in having Department of Veterans Affairs (DVA) process all entitlements in a timely and proper manner. The letter of invitation stated that the highest priority of the committee is to bring about major improvement in the manner in which veterans' claims and appeals are being adjudicated. This commitment coincides with a VFW priority legislative goal that our Commander-in-Chief Jack Carney presented last month when he appeared before a joint hearing of the Committees on Veterans' Affairs. He firmly urged the Clinton Administration and the 103rd Congress to propose and adopt a DVA budget for the coming year that would ensure all veterans receive their entitlements and health care benefits in a timely and proper manner.

We will limit our statement for the hearing to the assessment of those entitlements that are processed by the Veterans Benefits Administration (VBA) at the Regional Office (RO) level. Currently, there is a VBA staff of about 13,800 employees who work primarily within the 58 ROs which are located throughout the continental United States and several overseas locations. There is also a VBA supervisory and policy-making element located in the VA central office here in Washington, DC. Its total cost this year is about $592,000,000. The basic VBA mission is to process all entitlement claims. These include requests for pension, disability compensation, burial benefits, rehabilitation assistance, education, home loans and insurance. VBA is also responsible for conducting various outreach programs, including the relatively new Transition Assistance Program (TAP). Obviously, BVA is a very important and very busy part of the VA.

At the end of March, which was half way through this fiscal year (FY) 1993, VBA had a backlog of about one-half million claim cases; i.e. 539,000. It now takes VBA on average about one year to process a claim. The actual number of months it takes to process any given claim will vary depending on the RO and the entitlement being considered. However, it is also true that the VFW's network of national service officers are waiting about 3 months longer this year as compared to last year before receiving back a completed claims response at the RO. We offer these facts to make the point that the element of timeliness has continued to deteriorate from what the veteran community was experiencing just 18 months ago.

Unfortunately, the fact is that the quality of claims decisions also continues to deteriorate despite the fact it takes longer to decide the average case. The VFW has reached this conclusion based on information made available from the Board of Veterans Appeals (BVA). Of course BVA will only see those cases that the veteran/claimant believes was initially decided incorrectly by VBA at the RO level. We have no way of knowing how many improper decisions were not appealed. However, in FY 1992 a total of 33,000 cases were appealed to BVA. More that 50 percent, some 17,000, were returned to the RO because they did not contain enough information to make a meaningful decision. Those cases simply failed to meet the VA standard for development. Another 5,000 cases, about 16 percent, were reversed by BVA and returned to the RO to grant the entitlement(s). The remaining 11,000 cases, about 33 percent, were affirmed, meaning BVA agreed with the RO decision. The VFW clearly does not accept that one out of every three claims as being correct is "good work" by any governmental office.

There are two factors that have had an adverse impact on VBA's operation. First, the Court of Veterans Appeals, (CVA) issued rulings requiring VBA to properly document and develop each case based on the issues stated by the claimant and to further identify and develop implied (emphasis added) issues. Also, VBA must assist the claimant in case preparation. The VFW believes these are reasonable requirements that outline how a bureaucracy should service its constituents. The fact that this is now a problem makes the point that VBA had not been doing its job correctly for at least the past five to seven years.

The second problem concerns the consistent lack of funding to hire VBA personnel in the past two administrations' budgetary planning documents and in the past several congresses annual VA appropriation acts. Today, VBA has a "people problem". They simply do not have immediately available the quality or quantity of staffers to dig themselves out from under the problems just presented. Furthermore, the VFW does not believe that any significant amounts of new money will be made available to hire the estimated additional 2,000 VBA employees we believe it would take, under the present circumstances and the current method of operation, to clear things up to a point where a case could be properly decided at the RO within 180 days. Hence, we conclude that VBA is no longer accomplishing its claims mission. Our next best hope is to work with VBA and rethink the entire claims processing cycle with the goal of doing the job with what assets are available.

The VFW recognizes the fact that it is always easier to be the critic rather than the author. We also realize that as a veterans' service organization (VSO) we are outsiders, and that we will never have all the expertise nor all the answers to improve a very complex internal VA operation. However, as an immediate start for FY 1994, we offer the following ideas:

---- plan for overtime pay at selected ROs to clear the backlog;

---- pool/realign all VBA assets within an RO to address claims;

---- assign, on a temporary basis, various mixes at VBA headquarters of experts to work at ROs to give selected "pin-point" training such as those weak in rating skills or in writing the disability award(s), if this is a station's bottleneck.

---- because the VBA headquarters element will have visited and conducted its own field surveys at 12 different ROs at this point in time, there must be some positive field expedients being used somewhere that should have a broader application to other stations. At least this concept should be kept in mind when the remaining 11 ROs are inspected during the last part of FY 1993. By the end of September the VA headquarters will have completed a total of 23 trips to inspect half of all its ROs and, by then, should have a better idea of other possible changes.

In conclusion, the VFW pictures VBA as a group of people more or less moving in the same direction trying to reduce an abysmal mountain of claims cases while being entangled in a large web of rules and regulations and overhanging vines of procedures and protocol, many of which have just grown out of control. The situation is made worse because there is no one on the ground with either a machete to clear the underbrush or a compass to find a new direction. However, there is a recording that keeps repeating "... automatic data processing is on the way..."

The VFW believes the VBA workforce deserves something better and we want to be part of the rescue force. This concludes our formal statement, Mr. Chairman. I, or Mr. Collins, will be happy to respond to any questions you and the other committee members may have.

SERVING
WITH
PRIDE

Statement

of

Michael F. Brinck
AMVETS Naional Legislative Director

before the

House Veterans Affairs Subcommittee
on
Compensation, Pension and Insurance

regarding

Department of Veterans Affairs Adjudication
of
Claims for Veterans Benefits

April 21, 1993

A M V E T S

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Mr. Chairman, thank you for this opportunity to present testimony on the challenges of improving VA's compensation and pension adjudication.

Veterans receive compensation to offset loss of income due to service-connected disabilities. Many suffer significant employment handicaps beyond what is compensated by the VA and others are totally disabled and are unable to augment their VA checks with outside income. Totally disabled, non-service connected VA pensioners must also rely upon the nation's generosity to live with a minimum of dignity.

The claims delivery system cannot and will not be fixed until this body and the administration admit to the total disaster a decade of under funding and under staffing has created. It is time to finally provide the resources that will enable the VA delivery system to adapt rapidly to emerging social and technological challenges, thus better-serving veterans and the country. Perhaps the single most important recommendation in this year's Independent Budget is the increase of 2013 FTEE for Veterans Benefit Administration (VBA). Simply put, there is no other way to significantly and rapidly reduce the backlog in claims. Therefore, AMVETS whole-heartedly supports the FTEE increase called for in the Independent Budget because waiting six to twelve months for action on a claim is unacceptable. And to assure veterans of timely claims adjudication, AMVETS supports legislation that would mandate a maximum reasonable processing time for a claim after which benefits would be granted on an interim basis. Today, the backlog in claims exceeds 600,000, and is expected to continue its rapid growth unless there is an increase in resources devoted to reducing that number. This is a prime example of the need to fund the costs of delivering benefits - including personnel costs - from mandatory spending accounts.

You have asked us to bring concrete ideas to the table today on how to fix the system. The really easy answers are more people and more money as stated earlier, and in the end, these must be considered to achieve meaningful improvements. But there are also management actions to augment some of the obvious fixes. AMVETS would like to suggest that a Total Quality Management approach to designing the adjudication system offers many solutions that would let VA work smarter, not harder. First, the adjudication process should be viewed as a production system that uses resources to produce a quality final product. In this

case, the product is a final decision that accurately awards or denies benefits. More on how to define a final decision in a moment.

The production system must be designed from throughout with a high quality product as the ultimate goal. To begin, the system designers must consider the resources that will be available to accomplish that goal. VA's resources in this case are its employees, facilities and equipment, data, the claimant, and the VSO service officers and political strength. A systems engineer would design the system, put it into operation, stress the system to identify the weak component in the system, fix the component and stress the system again. As we have described previously, the weakest component in the system has been identified as the regional office, and that is where the resources should be devoted.

Statistics indicate the greatest need for additional personnel, technology and training is at the regional office to compensate for the increased workload due the effects of staff cuts, inadequate automation, insufficient training, rulings by the Court of Veterans Appeals and an increased demand for benefits.

Because of the increasing complexity of the adjudication process, VA estimates that it takes about two years to become a fully qualified adjudicator. Therefore the system designers must lay out a personnel program that addresses that complexity and assigns a grade sufficient to attract well-educated and educable personnel to fill the positions. The personnel structure must reflect an opportunity to advance within the adjudication system and not encourage qualified adjudicators to move to other divisions within VA or the government. AMVETS suggests universal testing similar to that employed by the military to identify those who excel in the intricacies of adjudication and who merit promotion based on their technical knowledge, quality and quantity of work as well as leadership and management abilities. It takes good, competent people to deliver services in an efficient and accurate manner. Adjudication has become a much more complex process requiring a higher level of skill and insight. Therefore, VA should consider increasing the GS ratings of adjudication personnel to attract and retain competent employees. VA must also develop performance standards that reward quality as well as quantity of work and redefine the standards by which cases are tracked through the system to accurately reflect adjudication times. VA must cease judging production on the mere movement of a claim from one desk to another.

Training programs must be designed to accommodate new hires as well as current employees. Supervision of new personnel is especially critical, and supervisors must be held accountable for the progress of those under their guidance.

It is also imperative that office automation be designed to allow VBA computers to interface with VHA computers to access all relevant records in a veteran's file to help speed adjudication and treatment. Improved automation will shorten the adjudication process. AMVETS suggests some form of on-line computerized help for adjudicators similar to those found in commercial computer programs. This would offer a way to keep adjudicators up-to-date on changes in regulations due to the latest decisions by the Court of Veterans Appeals or legislation. The on-line help system would provide an index of adjudication topics and complete explanations and guidance on implementation. If implemented properly, all adjudication staff would have instant access to the most recent information needed to process claims. This would also increase productivity by eliminating thousand of hours spent posting regulation changes and assuring uniformity of reference materials. Emerging artificial intelligence (AI) technologies also offer large productivity improvements, by reducing training requirements and records collection and analysis.

AMVETS also suggests some form of administrative triage to screen the more difficult cases from relatively easy decisions. That would allow VA to apply the minimum resources needed to a given case and would integrate the caseload into the training process. VA must also do a thorough analysis of its information requirements to determine the absolute minimum data needed to make a decision on a claim.

Perhaps consideration should be given to utilizing adjudicative personnel in some type of split shift configuration, i.e. half of the division would report to work four hours before the current normal work day - the other half of the staff would report two hours after the normal start-up time, thus ending the work day two hours after the normal office hours. This configuration would provide six hours of uninterrupted productivity. The hours that overlap with all of the regional office staff could be used for training and other day-to-day operational necessities. Also of interest would be the potential for using recently retired, knowledgeable adjudicators on a contract basis during the extra hours when they could be provided with all the needed resources. A further option would be to contract with a professional services firm

to provide specialists to assist in the adjudication process similar to the way DoD contracts for help on procurement programs. We are sure that reasonable accommodations, adjusted office hours, contract retirees and/or professional services firms all offer the means to reduce the size of the claims backlog.

The transfer of records from the military services to VA is often a very time consuming process. AMVETS applauds the Army's decision to send separating soldier's medical records directly to the VA and we urge the Congress to mandate that the other services do likewise as a means to shorten the adjudication process.

Statistics for the Board of Veterans Appeals (BVA) illustrate the problem facing VBA. Since the advent of the Court of Veterans Appeals (CVA), the BVA has struggled under a heavier caseload, as have the Regional Offices, due to the actions of the Court. BVA operating statistics show a 43% decline in decision per FTEE, a 26% drop in total decisions and steadily rising remand rates now in excess of 50%. The Independent Budget for 1993 estimates that left unresolved, BVA response time will approach 550 days! Clearly only additional employees can help BVA dig out of the hole. (This is in no way offered as criticism of the Court, which we absolutely support. Rather it is intended to show the dire conditions facing the adjudication divisions.)

It also makes no sense to return a faulty product to the beginning of the assembly line for correction of a defect. If at all possible, the defect should be fixed on the spot and save the administrative cost and time of transferring the product between bureaucracies.

In closing Mr. Chairman, it is important to retain economic fairness for our most deserving veterans while decreasing the adjudication times. There is a crisis in the timely delivery of benefits and it is time for bold and decisive action. We ask this committee to consider the recommendations contained in the FY 94 Independent Budget for the Department of Veterans Affairs as a reasonable approach to funding VA. We believe that a common sense approach coupled with sufficient resources can solve the adjudication problem. That concludes our statement.

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STATEMENT OF

VIETNAM VETERANS OF AMERICA

Presented By

Paul S. Egan
Executive Director

Before The

House Veterans Affairs Subcommittee On Compensation, Pension and Insurance

On

Reform of VA Regional Office Adjudication Practices

April 21, 1993

Mr. Chairman and members of the Subcommittee, Vietnam Veterans of America (VVA) appreciates the opportunity to present its views on VA's adjudications processes at the Regional Office level. We applaud the intent of this hearing as one in a series designed to bring reform to overall adjudications practices ranging from the original claim filed at the Regional Office (RO) up through the Board of Veterans Appeals (BVA) and finally to the Court of Veterans Appeals (CVA).

DISCUSSION

While we understand that this hearing is focused on practices at the RO level, it must be stated that RO practices in many respects are directly related to practices at the BVA and decisions of CVA. In fact one of the problems plaguing the entire system of adjudications is the tendency of RO and BVA officials to ignore the co-dependency of their respective adjudications entities. As a practical matter, actions taken and practices used by each respective adjudications entity often engender serious systemic consequences for operations in both. Similarly there are co-dependencies between VA Medical Centers (VAMC), ROs and DoD that play important roles in claims adjudications which are also ignored all too often by each respective entity.

Apart from the frequent tendency of individual adjudications or adjudications-support entities to function in a vacuum without coordination, management practices designed to spur the volume of claim dispositions also hamper quality in adjudications. All too often adjudicators are given statistical credit in measuring their performance for actions that delay rather than decide claims.

Moreover, the backlog of claims pending action at the ROs around the country are at least partially caused by adjudication performance criteria that discourage full claims development and claims decision-making. Under the performance standards employed by RO managers today "paper shuffling" is rewarded and the thorough adjudication of claims is discouraged.

Naturally, reform of VA's adjudications must find some balance between the twin objectives of speed and quality. From a purely political perspective there seems a bias by many legislators toward speed of adjudications. Much of this bias is undoubtedly attributable to the volume of constituent mail from frustrated veterans whose claims sometimes monopolize the time of caseworkers in congressional district offices. The VA has responded to this bias by extolling the virtue of performance measures that make disposition of claims look statistically favorable but which mask the failure to fully develop claims and actually decide them on a full analysis of the submitted material.

The bias favoring speed must be resisted by tempering the obvious need for efficiency with an equally compelling need for quality. After all, and apart from the clamoring of veterans for speed, it must be understood that veterans will benefit far more from claims taking longer to adjudicate properly than from claims improperly adjudicated quickly. The latter of these claims too often wind up lingering within the overall system, consuming more time than necessary with numerous appeals, remands and unnecessary dust gathering delays. In fact, claims properly developed and adjudicated at the outset would save considerable time and constitute important new efficiencies.

REGIONAL OFFICE AND BOARD OF VETERANS APPEALS COORDINATION

Today the rate of remands from the BVA back to the ROs stands at 53 percent. The reasons are fourfold. First, BVA panels are

responding to CVA decisions requiring additional claim development or use of different, and sometimes additional criteria in claim adjudications. Second, RO adjudicators are failing to follow laws and regulations in developing and deciding claims, encouraged instead to take shortcuts in order to earn productivity credits from RO managers. Third, the ranks of adjudicators in ROs have been in transition since the early 1980s resulting from retirements of the World War II generation. Others have simply left the VA out of frustration. Vacancies have also gone unfilled as VA has reduced its FTEE levels through attrition. This means that a significant segment of adjudicators lack experience. More importantly, adjudicators are in need of comprehensive and on-going training as to requirements under law, regulation and the state of CVA-decided precedent. Finally, the ROs have been targeted for cuts in resources resulting from over a decade of short-sighted emphasis on short term fiscal savings at the expense of long term costs. We propose the following:

Comprehensive and On-Going Training

This important step should help alleviate remands by the BVA by assuring adjudicators are properly developing claims and making adjudication decisions consistent with law, regulation and CVA precedents.

New Management Criteria for Measuring Adjudicative Performance

The VA Central Office must be compelled to scrap all performance criteria that encourage paper shuffling rather than claims development and proper decision-making. Current VA work measurement systems encourage VA adjudicators, rating board members and counsel to BVA to make premature decisions based on inadequate evidence and without proper consideration of beneficial statutes and regulations. The major problem here is that VA entities measure performance as if adjudicators were making claims for work credit instead of veterans making claims for benefits.

In essence, once a premature final decision in a claim is made by an adjudicator, rating board member or BVA legal consultant, work credit is earned and the adjudicative timeliness clock stops. Unfortunately for the veteran claimant awaiting a final decision based on thorough development of the claim, the clock keeps running because the claim will remain active until it is fully developed and properly adjudicated. An example will illustrate this point clearly. Let us suppose a veteran files a claim for PTSD compensation in January 1990. In April 1990, the claim was denied by the RO without proper development and proper consideration of CVA case law. However, in spite of the inadequate development, the RO would receive credit for the original denial of the PTSD claim. If the veteran then filed a substantive appeal, the RO would receive a second work credit for the preparation of the Statement of the Case (SOC).

If the case goes to the BVA it will probably be remanded because of the inadequate development. The BVA counsel (and associate counsel) would receive a third work credit for his or her work in the preparation of the BVA remand. Assume that the BVA remanded the case in April 1991.

Then the RO would have to develop the case properly and if the claim continues to be denied, in whole or in part, the RO would have to prepare a Supplemental Statement of the Case (SSOC). The RO would receive a fourth work credit for the SSOC. Assume that the SSOC was sent to the veteran in July 1991.

The case may very well be remanded again by the BVA because some of the medical evidence of record may be outdated. If a new medical or psychiatric exam is needed, the VAMC conducting the exam will get an additional fifth timeliness credit. Assume that the

second BVA remand took place in January 1992. The BVA counsel would receive the sixth credit for the work on the second BVA remand.

As a result of the second BVA remand the RO would have to undertake additional development and issue another SSOC. Of course the RO would obtain a seventh work credit for this effort. Assume that the SSOC was issued in May 1992.

Finally, in April 1993, the BVA would receive all necessary information, grant or deny the benefits sought and by doing that make a final adjudication in this claim. Meanwhile, the BVA counsel would receive the eighth work credit in this case. From our perspective it would have made more sense for the VA to develop this claim properly and to have decided it in 1991 rather than shuffle it back and forth between the RO, BVA and VAMC until 1993.

The lesson of this example should be clear enough; VA should institute other ways to measure production, timeliness and quality. In the above action eight work credits were earned by the RO, BVA and VAMC but the veteran through no fault of his/her own received only one final properly adjudicated decision.

Moreover, no RO work credit should be available at least until the 60 day appellate period following an RO decision has lapsed without a notice of disagreement (NOD) from the veteran. If the veteran does file a substantive appeal, no work credit should be taken by any VA entity until the BVA makes a final decision. This would give VA and the veteran the same stake in a thorough and prompt adjudication.

Resources Equal To Expectations Must be Allocated

Resource shortages thinning the ranks of VA adjudicators have gone on for a decade. As reforms designed to assure appropriate measures of performance are put into place, a better idea of what resources will be needed to meet the demands placed on the ROs will become clear.

Over the last several years, statistical presentations of performance by the VA based on inappropriate indices have been cynically used to make VA's performance look better than it is and to make further resource cuts look palatable to congressional decision-makers. This must end and a more accurate picture of performance must be made available. Only with a more accurate picture of what VA is doing and can do will we fully understand how much additional fiscal resources will be needed to bring VA performance into line with what is expected.

REGIONAL OFFICE AND MEDICAL CENTER COORDINATION

Just as RO adjudicators are given production incentives that tend to work at cross purposes from quality and timeliness, VAMCs conducting physical examinations needed by RO adjudicators to rate levels of disability are also given incentives hampering quality and generating delay. In order to comply with timeliness standards, VAMCs are given 35 days to schedule and conduct rating examinations requested by ROs. Because of the volume of requests from ROs for rating exams, VAMCs have developed some rather creative ways to claim timeliness credit without carrying out the rating exams.

The VA's Office of Inspector General (IG) has noted five such methods. First, exams are scheduled without giving the veteran sufficient time to make plans to appear for the exam. When the veteran fails to show, the VAMC claims timeliness credit by reporting to the requesting RO that the veteran failed to appear. Second, exams are cancelled by the VAMC rather than rescheduling them and reporting to the requesting RO that the veteran failed to

appear.

Third, exams are cancelled when the RO fails to provide needed data even though this data is already available to the medical administration department at the VAMC. Here, the VAMC reports to the requesting RO that data are incomplete and asks for additional information.

Fourth, VAMCs will sometimes refuse to schedule an exam for a veteran with a homeless shelter address and then report a "no show" by the veteran. Presumably this is justified by VAMCs reasoning that the non permanency of a shelter address means a mailed notice of a scheduled exam will never reach the veteran.

Finally, reports on physical exams scheduled and haphazardly completed are deficient in the data needed by the RO to adjudicate a disability rating. This causes the RO to request a new exam.

Obviously the high volume of work to be done by contrast with available staffing and resources at the VAMCs encourages practices such as these. Nevertheless, we see from this yet another example of a timeliness criteria being used that bears no relationship to the actual goal of adjudicating claims and propose the following:

Realistic Timeliness Standards Needed

Obviously, VAMCs are overburdened with requests for rating exams. So too are ROs overburdened with claims requiring rating exams.

As it stands now, however, both ROs and VAMCs are encouraged to act in ways that make their performance appear more favorable than is possible. The timeliness standards for measuring performance are inappropriately biased toward volume and mask a true picture of what volume of work can be reasonably expected, given demand and resources available to meet demand. Those standards must be revised and RO as well as VAMC management must be compelled to devise performance criteria for use in measuring coordination of RO exam requests with VAMC capacity to complete requested exams.

Regional Offices Acceptance of Non VA Medical Examinations

Having suggested that VAROs and VAMCs have more work to do than can be realistically completed and that steps must be taken to allow a clearer picture of the resource deficit, it is also clear that extended delay can never be fully abated without further reforms. Currently, VA adjudicators will only accept a physical exam for rating purposes if the exam was done by a VA physician at a VAMC. This restriction must be lifted. Surely doing so would be consistent with the VA's own rules resolving disputes by giving the benefit of the doubt to the veteran.

If a veteran's private medical records are sufficiently complete to support a claim for a specific disability rating or set of disability ratings in a single claim, RO adjudicators should be allowed to use these records in rating claims. In this proposal we assume the cost of exams by outside physicians are the responsibility of the veteran.

MANDATORY DoD EXIT PHYSICALS

Unless a condition or the genesis of a condition are evident in military medical records, claims for disability are almost impossible to assert successfully. Recently, however, the military services have begun to curtail the conduct of physical examinations just prior to discharge from the military. Under the circumstances, the exit physical constitutes the last available

opportunity for a service member to report and have recorded in military medical records a condition sustained or aggravated during military service. This places the unsuspecting dischargee at a distinct disadvantage when he/she later experiences progressive difficulties resulting from a condition or a residual of a condition sustained in the military for which a disability claim is filed with the VA. Legislation must be enacted to require the military services to conduct exit physical exams and to schedule physical exams for any veterans denied an exit exam upon discharge, and who desires such an exam.

Mr. Chairman, this concludes our testimony.

PARALYZED VETERANS
OF AMERICA
Chartered by the Congress
of the United States

STATEMENT OF
FRANK R. DE GEORGE, ASSOCIATE LEGISLATIVE DIRECTOR
PARALYZED VETERANS OF AMERICA
BEFORE THE
SUBCOMMITTEE ON COMPENSATION, PENSION AND INSURANCE
OF THE
HOUSE COMMITTEE ON VETERANS' AFFAIRS
CONCERNING THE
ADJUDICATION OF VETERANS' CLAIMS AND APPEALS
BY THE
DEPARTMENT OF VETERANS AFFAIRS

APRIL 21, 1993

Mr. Chairman and Members of the Subcommittee, it is an honor and a personal privilege to appear here today on behalf of the members of the Paralyzed Veterans of America (PVA). PVA appreciates your invitation to present our assessment of the Department of Veterans Affairs (VA) adjudication of veterans' claims and appeals processing at the VA Regional Office (VARO) level, the impact of budget shortfalls, judicial review of veterans' claims on the entire benefits process, and how to improve the process and reduce the tremendous backlogs.

PVA believes that one of the most critical tasks of VA's Veterans Benefits Administration (VBA) Compensation and Pension (C&P) Service is the ability to provide, in a timely and accurate manner, disability benefits to our nation's veterans, their dependents and survivors. For those eligible beneficiaries, whether they be service-connected or nonservice-connected recipients, nothing could be more important than receiving those benefits granted by law to which they are entitled. An entitlement, by definition, implies timely delivery of benefits.

In FY 1992, according to VA, it took 164.2 days to process C&P claims; in FY 1993, to date, it takes 176.8 days. Using the same computer profile, we believe it will take the VA 200 days to complete a C & P claim by the end of 1994. The backlog has increased exponentially from 391,743 total claims in FY 1991 to, as of March 19, 1993, an astronomical total figure of 538,833 claims in FY 1993. The Compensation and Pension claims' backlog, as stated for FY 1993, consists of 127,459 original, 268,959 supplemental, and 142,425 ancillary cases. These dreadful statistics match the delays which Vietnam veterans faced 25 years ago. At that time, however, the active duty force was almost twice the size of today's armed forces. Mr. Chairman, these figures are evidence of dramatic increases in the time it takes to adjudicate all categories of veterans' claims. They are unacceptable to this veterans' service organization.

In assessing the overall problems facing the Compensation and Pension Service, it is Paralyzed Veterans of America's opinion that inadequate staffing levels render VBA unable to effectively accomplish its mission. One must realize that there is a critical interaction between the various services within VBA. Declining numbers of veterans benefits counselors, vocational rehabilitation specialists, adjudication and rating board personnel, and others has become a malignancy in the adjudicative process.

VA should facilitate modernization of its automated data processing (ADP) systems, but PVA believes it is important for VBA to oppose reductions in FTEE as a trade-off for modernization. We believe there should be a clear understanding by VBA management that a sufficient level of FTEE is the most important factor in restoring good service to veterans.

PVA strongly recommends a FY 1994 budget increase of 2013 VBA FTEEs and 336 General Administration (GA) FTEEs included in a total General Operating Expenses (GOE) account of 2508 FTEEs for program claims processing purposes. We urge the Congress to appropriate $1,066,148,000 for FY 1994 for GOE (for VBA and GA accounts). There is a vital link between the GOE account and VBA's ability to carry out the laws that mandate delivery of the numerous entitlement programs under VA's jurisdiction.

Better trained staff are always more efficient. Case development performed by inadequately trained personnel is bound to be inadequately developed. PVA always emphasize to its National Service Officers (NSOs) assigned in Regional Offices, VA Medical Centers, and other sites throughout the United States, the need for proper development of claims. If the claim is properly developed at the Regional Office level, prompt appellate adjudication occurs on the merits without the need for remand. PVA National Service Officers regard the proper case development as essential and stand ready to assist in this critical part of the claims process.

VBA has made some strides in training, most notably in establishing the VBA Training Academy in Baltimore Maryland. We are optimistic that graduates of the Academy will possess a comprehensive and consistent interpretation of the laws, regulations, and procedures that must be applied by them on a daily basis to an ever-increasing volume of complex disability claims. VBA should continue to expand training activities for new personnel and provide continuing education for employees to maintain proficiency in an always changing environment. We strongly urge Congress to support this effort by appropriating $8 million for VBA training in FY 1994.

The VA also needs to become introspective regarding adjudication procedures. Before judicial review, many improper practices were tolerated which are no longer permitted. One example of this is the evaluation and assessment of evidence from private medical sources as well as sworn testimony provided by the claimant. Prior to judicial review, this evidence was in too many instances discounted or disregarded. The pervasiveness of this practice is illustrated by the repeated admonitions of the Court in its opinions concerning the failure to consider all evidence of record. The less than adequate Statements of the Case permitted in some Regional Offices are another example. This issue has not been addressed at length by the Court but may be expected to be addressed in the future.

PVA is convinced that most savings may be brought about without legislation. What is needed first and foremost remains the oversight work of this Honorable Subcommittee and the Senate Committee. PVA urges Congress to <u>legislate</u> reasonable timeliness standards for benefit and service delivery. Furthermore Congress should appropriate sufficient funds to enable the VA to meet these timeliness standards.

As PVA has stated in earlier Subcommittee hearings, it is not the Court of Veterans Appeals that is impacting on the VA adjudication system but VA's own regulations which the Court is now compelling VA to obey. An example of this is in the area of the so-called duty to assist. The Court in <u>Littke v. Derwinski</u>, 1 Vet.App. 90 (1990) decided that, at minimum, VA's duty to assist included advising the veteran to submit the results of his private medical examinations and to make them part of the record on appeal. The Court re-affirmed the regulatory duty to assist veterans in

obtaining private medical records in Saqainza v. Derwinski, 1 Vet.App. 575 (1991).

Mr. Chairman, PVA supported the provision in Public Law 101-237 which required the VA to provide a brief summary of the evidence considered, and the reason for the decision, whenever a claim for disability benefits is decided. We believe this is a fundamental ingredient of every claimant's due process rights. We understand that this provision, which became effective February 1, 1990, is taking a toll on VBA's ability to provide timely responses. Although we can appreciate the significance of the additional workload which has been placed on claims processing personnel, we do not believe anyone should have second thoughts about the wisdom behind the enactment of this provision.

In conclusion, Mr. Chairman, PVA thanks you and the Members of this Subcommittee for your willingness to engage in aggressive oversight of the Veterans' Benefits Programs. This concludes my testimony and I will be happy to answer any questions.

STATEMENT OF PHILIP R. WILKERSON, ASSISTANT DIRECTOR
NATIONAL VETERANS AFFAIRS AND REHABILITATION COMMISSION
THE AMERICAN LEGION
BEFORE THE SUBCOMMITTEE ON COMPENSATION, PENSION AND INSURANCE
COMMITTEE ON VETERANS AFFAIRS
U.S. HOUSE OF REPRESENTATIVES
APRIL 21, 1993

Mr. Chairman and Members of the Subcommittee:

The American Legion appreciates the opportunity to offer comments on the current operations of the Veterans Benefits Administration in the processing and adjudication of veterans' benefit claims.

This Subcommittee held a similar oversight hearing in March of last year on the status of VA's claims adjudication process. In our view, such continuing oversight is essential in order to ensure that veterans and their families receive the Congressionally mandated monetary benefits, to which they are justly entitled, in a timely manner.

Mr. Chairman, we wish to commend you for scheduling this hearing to consider the issues relating to the ever-increasing backlog in pending claims in the regional offices and possible solutions to this chronic problem.

The American Legion has several major areas of concern with respect to the Department's ongoing efforts to address the continued deterioration in the quality and timeliness in processing of benefit claims.

The decline in service to veterans and other claims provided by the Veterans Benefits Administration's regional offices over the last three fiscal years is graphically illustrated by the increases reported in the processing times for all types of claims actions, with the exception of those for burial benefits. Claims for service connection in FY 1990 were

completed on average in 151 days. In FY 1992, it was taking 164 days and in FY 1993, it is taking about 174 days. VBA's stated processing time goal is only 106 days. Other types of claims show a substantial, but somewhat less dramatic increase in the time required to process. In FY 1990, DIC claims were being completed in 94 days. In FY 1992, it was taking 99 days and currently it is taking about 103 days. Disability pension claims were processed in 97 days in FY 1990 and 114 days in FY 1992. In FY 1993, about 118 days are required. Reopened claims were taking 96 days in FY 1990, 105 days last fiscal year and currently take an average of 121 days.

It is also taking the regional offices substantially longer to prepare a case for certification to the Board of Veterans Appeals. In FY 1990, 50 days were required. In FY 1992, it was up to 88 days. However, currently processing time is down to about 64 days.

We believe the number of days reported under the current work-rate standards does not accurately reflect the total time required to complete the actual claims process. As an example, the regional offices have taken credit for the thousands of cases which have been certified to the Board. However, months later, over half have been subsequently remanded back to the regional office because additional due process development and readjudication was necessary. Such cases are merely added back to the pending workload and the regional offices are not penalized because of the previously unfinished work. In some instances, cases have been remanded more than once because to the failure to fully carry out the Board's instructions or fully develop the case. If the issues had been properly developed and adjudicated the first time, the appeal and remand would have been unnecessary. In point of fact, the only one penalized is the veteran who is now waiting months and years for a final decision on his or her claim.

Processing times by the Board of Veterans Appeals have also increased over this same period. In FY 1990, the Board's response time was about 152 days. Although it improved slightly in FY 1991, this gain was erased in FY 1992 when it was taking 240 days to complete action on an appeal. In the current fiscal year, it is estimated the response time will be in the range of 441 days. What is particularly shocking is not only the length of time it is taking for the Board to issue a decision, but the fact that in over fifty percent of the appeals, the case is remanded back to the regional office for further development and adjudication. Once back at the regional offices, remanded cases are not handled any differently than other pending claims. In all too many instances, veterans are having to wait years for a final decision on their claim.

We could cite a number of examples where seriously disabled veterans have, in fact, been kept waiting for years unnecessarily because actions on their claims are either incorrect, piecemeal or both. However, we will limit our comments to just two examples.

In one case, a totally disabled, seriously ill, Vietnam veteran exposed to Agent Orange was diagnosed with leukemia in the late 1980's. In 1990, he submitted expert medical opinion relating his condition to exposure to Agent Orange. Since 1990, his case has been under review by the New York VA regional office, VBA and VHA, after which it was referred to an independent medical expert at the Duke University Medical Center. The veteran's claim was denied early last month. Despite all the time and effort which went into this review process, the case was not fully developed. This deficiency was pointed out by a medical expert physician at the Environmental and Occupational Health Sciences Institute in Piscataway, New Jersey four weeks ago. The regional office has refused to consider the case further. This veteran, as noted, is seriously ill and has been hospitalized several times during this period.

He is without funds and is being cared for by his 77 year old mother who has had to return to work to support the both of them. However, no action was ever taken to consider his possible entitlement to nonservice disability pension benefits while his claim for service connection is pending. We do not believe VA has fulfilled its statutory duty to assist this veteran and properly adjudicate his claim.

In another case, the veteran suffered a severe ankle sprain as a result of a parachute jump in 1950. He developed severe varicose veins in the injured leg which eventually required multiple surgeries. His claim for service connection was repeatedly denied. His disability worsened to the point where, in mid-1991, he was forced to take early retirement. He reopened his claim in July 1991 based on a new medical opinion and service connection was finally allowed. However, the subsequent rating assigned the wrong percentage evaluation and failed to include the dependency allowance. These discrepancies took many more months to correct. In addition, no action was ever taken to consider the issue of entitlement to individual unemployability benefits until March 1993. A personal hearing was conducted on April 5th and a decision is still pending. Poor quality adjudication is responsible for the mistakes and delays which have occurred in this case over the last two years. We believe that had the veteran been unrepresented, he would never have received favorable action on his claim.

Each year, The American Legion testifies before the congressional budget, appropriations and veterans affairs committees protesting operating budgets, which have called for continued cuts in adjudication personnel, at the VA regional offices. Federal budgetary policy over the last 12 years has effectively left the regional offices without the sufficient numbers of trained personnel and data processing resources to handle a workload which has risen dramatically in both size and complexity. New benefits and due process legislation and the

imposition of judicial review has further slowed the claims process and resulting in a backlog of unworked cases of major proportions.

Landmark decisions by the Court of Veterans Appeals over the last two and a half years have highlighted fundamental deficiencies and inequities in VA's adjudication and appeals process. Far too few steps were taken by VBA in this period to prepare for the orderly and timely integration of the Court's decisions into the routine processing of claims. However, within the past year, the flow of guidance and information to the field offices relating to the Court's decisions and other policy issues has greatly improved. A variety of test programs and projects are underway at a number of stations to evaluate new methods and equipment which may enhance overall processing times.

Preliminary information on VA's budget request for FY 1994 identifies an additional 242 FTEE for the Compensation, Pension and Education programs. These resources will help provide much needed and long overdue support to the field stations. However, in our opinion, because of the sheer size of the backlog and a growing, rather than a declining number of claims being filed, this added support will not produce a substantial reduction in the pending backlog of cases. Not only does it take months to hire additional personnel authorized, but it takes a minimum of two years before an individual has sufficient training and experience to become fully productive. In recent years, there has been a significant turnover in the staff of the Veterans Benefits Administration as a result of retirements and mandated staffing reductions. This has left the regional offices with a high proportion of trainees and funds for both centralized and on-station training have been limited under previous budgets. The net effect of inadequate staffing, training and the lack of substantial improvements in the TARGET system has resulted in more mistakes being made in the ratings and other types of

claims actions. This is evident not only in VA's quality reports, but in the sustained level of appeals filed and a remand rate by the Board of Veterans Appeals in excess of 50%.

The American Legion, over the past several years, has been very concerned by the continuing series of problems which have adversely affected VBA's effort to develop and implement a viable and effective ADP modernization program. The long-promised improvements in timeliness and service have never materialized, despite major expenditures for new hardware and programs. However, staffing cuts in the Administration's budget requests have been repeatedly predicated on productivity increases associated with various modernization initiatives. In its report released in November 1992, GAO was highly critical of VA's overall planning process and equipment acquisition plans. The report concluded that VA needed to further analyze its current operations and procedures and more clearly define its goals of improved service to veterans before proceeding with further equipment purchases. The House Government Operations Committee, in particular, is continuing to review VA's modernization efforts and GAO is expected to report to that Committee later this Spring the findings of its follow-on study.

There is an urgent need for VA to modernize its information systems and equipment with an expected improvement in the level and timeliness of service. However, we do not want to see resources wasted because of poor planning or hasty decisions. The FY 1994 budget proposal delays the Phase III modernization project until 1995 and reallocates part of the previously authorized funding to increasing staffing levels in VBA. This will provide much needed support directly to the regional offices, while VA continues to review and redesign its modernization program.

In July 1991, VA established a task force to analyze the impact the Judicial Review Act of 1988 on regional office

workloads, as well as, the activities of the Board of Veterans Appeals and the office of the General Counsel and to develop recommendations on various administrative and legislative initiatives to improve the claims adjudication and appeals process within existing resources. In the course of their review, a series of meetings were held with the veterans service organizations to receive their comments and suggestions. The general consensus was that while VA's system of adjudicating claims was basically sound, a number of administrative and procedural changes could be implemented which would not require legislative action. In January 1993, as result of the Task Force's final recommendations to the Deputy Secretary, a departmental plan of short-term initiatives was developed. Certain legislative changes were also included in the recommendations.

The short-term initiatives include the development of performance standards for all employees in the adjudication process, which will place greater emphasis on the quality of work produced; periodic adjustment of the work rate standards to more accurately and realistically reflect the due process and Court-related requirements; greatly expanded training for adjudication personnel; development of the most up-to-date equipment and programs to assist adjudication personnel in their work; and the review of current classification of adjudication personnel.

We are supportive of these efforts to implement certain administrative and procedural changes in VBA operations which should help improve productivity and the overall quality of claims actions.

An improved level of training of new adjudication personnel, as well as, retraining of experienced adjudicators and rating board personnel, while requiring additional resources in some form, is critical to any solution to the current problem

facing the regional offices. They must be able to properly identify the issues in a claim, apply the pertinent regulations, guidelines and CVA precedents in reaching a decision, and ensure that the claimant is fully informed as to the reason and basis for the decision and their due process and appellate rights. With improved training should come an improvement in the quality of the decisions being rendered and increased productivity, over time. However, we do not believe the increase in productivity alone will permit a significant reduction in the pending backlog, at least not in the near term.

The American Legion would strongly recommend establishing, funding and staffing a facility dedicated to providing standardized training on claims adjudication and processing, similar to the National Veterans Training Institute (NVTI) funded by the Department of Labor for training veterans employment specialists. Since NVTI has become the official training grounds for Local Veterans Employment Representatives, Disabled Veterans Outreach Program specialists, Transitional Assistant Program facilitators and other veterans employment personnel, the quality of services provided unemployed and underemployed veterans has improve noticeably.

Such a facility within the VA would provide quality training of employees and should be expanded to include representatives from veterans service organizations who assist veterans in filing claims. This specialized training process would provide guidance and instruction to help eliminate common mistakes made in either the adjudication or claims process. Advance training or continuing educational programs could also be developed and administered through this facility. The Legion believes this would be money well spent.

It is imperative that VBA managers be able to accurately measure both the amount of work being produced and its quality. VBA's quality review program continues to report a substantial

number of rating and procedural errors. This will not require additional resources. We believe these are directly related to the lack of training for those responsible for decision-making and the need for a more effective quality control system. Quality must become the first priority and the standard by which the personal performance of adjudicators, supervisory and management personnel is evaluated.

Coupled with a revision of the quality control function at both the regional office and VA Central Office level, is the adjustment of the work-rate standards. These must set realistic levels and goals. This will permit managers to have a more accurate picture of production and pending workloads and resource needs.

We also believe arrangements could be made between the General Counsel and VBA which would permit District Counsel personnel in the regional offices to provide much needed legal advice and assistance to adjudication and rating board personnel.

Other possible alternatives include expanding the hearing officer's role by affording the position authority to correct any violations of the due process procedures obviously demonstrated in a regional office decision in a claim for benefits. The hearing officer's expanded role should also include, as another method in quality assurance, authorization to reverse, affirm or remand any administrative or rating action, as may be required.

We propose that the rating board, adjudication division, and development staff be divided into subunits, along the lines of a matrix-type system, with the rating board member serving as a subunit chief with the major responsibility of assisting, guiding and evaluating the units performance and insuring accountability. This matrix-type arrangement would serve also as a unit capable of development, processing, and rendering

decisions in individual claims. This idea would control the high number of cases remanded by the BVA, simply because of a lack of understanding of procedures on the part of one of the claim processing units. While on the topic of remands, BVA cases remanded back to the regional office in a matrix type environment would serve as a performance measure for a particular subunit, as well as, an education tool to enhance their skills and expertise in claims processing.

Elimination of Eligibility Verification Reports, with the exception of the form used for reimbursement of unusual medical expenses, is another recommendation for improving the delivery of benefits for claimants on the pension and DIC rolls as dependent parents. Removal of these forms would greatly reduce the voluminous amount of proper work adjudicators develop and mail clerks must process daily. Income of claimants can be verified and referenced through IRS, as VA is currently using its IRS cross-matching project.

Mr. Chairman, thank you for holding this hearing. The Legion will continue to work with this subcommittee to make the necessary changes to improve VA services to veterans. This concludes our statement.

STATEMENT OF
RICHARD F. SCHULTZ
ASSISTANT NATIONAL LEGISLATIVE DIRECTOR
OF THE
DISABLED AMERICAN VETERANS
BEFORE THE
SUBCOMMITTEE ON COMPENSATION, PENSION AND INSURANCE
U.S. HOUSE OF REPRESENTATIVES
APRIL 21, 1993

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

On behalf of the more than 1.4 million members of the Disabled American Veterans (DAV) and its Women's Auxiliary, I wish to express our deep appreciation for this opportunity to provide the Subcommittee with DAV's assessment of veterans' claims adjudication and appeals processing at Department of Veterans Affairs (VA) Regional Offices (ROs) and the impact of budget shortfalls and judicial review on VA's benefit delivery system.

At the outset, we wish to thank you Mr. Chairman, Ranking Minority Member Representative Bilirakis and the members of the Subcommittee for the timely exercise of your oversight responsibilities. We certainly appreciate the fact that your highest priority has been placed on bringing about major improvements in the manner in which veterans' claims and appeals are processed. By doing so, you have demonstrated, in a most meaningful way, your commitment to ensuring that America's service-connected disabled veterans and their families receive the VA benefits and services to which they are entitled.

Mr. Chairman, with your permission, I would like take a moment to familiarize the Subcommittee with DAV's efforts to ensure that our nation's veteran population receives the benefits and services to which they are entitled.

DAV currently employs a corps of 220 professionally trained National Service Officers (NSOs) who provide assistance to veterans in 69 offices throughout the country. While NSOs provide counseling on a wide range of VA benefits and services, the majority of their activities are dedicated to assisting veterans and their families on claims for compensation, pension and survivors' benefits from VA Regional Offices (ROs).

Additionally, DAV maintains a National Appeals Office in Washington, D.C. This office is staffed by eleven highly skilled National Appeals Officers (NAOs) and a medical consultant. Our National Appeals Officers have the primary responsibility to ensure, in all cases where DAV has been appointed as the appellant's representative, that each appeal is clearly and accurately articulated in its most favorable light to the Board of Veterans Appeals (BVA). During FY 1992, DAV represented 12,839 claimants before BVA, nearly 40 percent of all appeals.

DAV also provides representation at the Court of Veterans Appeals (COVA). This office, which was the first office opened by a veterans' service organization practicing before COVA, is currently staffed by four Judicial Appeals Representatives, possessing a wealth of knowledge and experience regarding the adjudication of veterans' claims both at the RO and BVA levels.

The DAV COVA staff filed the first represented, and jurisdictionally correct, claim with the Court, briefed the first case, provided the first oral argument by a nonattorney representative, and won the first fact-based case. Additionally, DAV led the way with the first settlement

agreement entered into with VA and accepted by COVA, participated in the first prehearing conference, filed the first motion for substitution of a party, and entered into the first settlement of an Equal Access to Justice Act claim. Finally, DAV had the first oral argument on a COVA decision before the United States Court of Appeals for the Federal Circuit, which we subsequently won.

Since its inception in mid-1989, DAV's COVA staff has represented hundreds of veterans before COVA. Even more noteworthy is the fact that our COVA staff has reviewed thousands of claims for possible representation before COVA. In meritless cases, veterans are advised not to appeal their claims to COVA, and, in many such cases, alternative actions, including reopening the claim with necessary evidence, are recommended.

During our last reporting period (July 1, 1991 - June 30, 1992) DAV NSOs reviewed 393,000 VA claims folders, appeared before VA Rating Boards 230,000 times, obtained 233,000 benefit awards and obtained $1.5 billion in monthly and retroactive benefits for veterans, their dependents and survivors.

Mr. Chairman, during the past decade, we have witnessed a steady decline in VA's ability to provide America's veteran population with quality benefit determinations in a timely manner. During this same period, VA's Veterans Benefits Administration (VBA) has had a reduction of more than 1,200 employees, more than half of which have come from the Compensation and Pension (C&P) service.

The current downsizing of our nation's military is further compounding VBA's benefits delivery problems. As an illustration of the military reduction in force impact on VA claims, we point to VA's C&P caseload. For the past several years the number of VA C&P beneficiaries has declined. In Fiscal Year 1992, however, C&P recipients increased by 6,000 with an estimated increase in Fiscal Year 1993 of more than 20,000.

Further evidence of VA's inability to provide timely benefit determinations is the dramatic increase in the time it takes to adjudicate virtually every category of veterans' claims.

The percentage of original compensation claims not completed within six months grew from 34.1 percent in Fiscal Year 1991 to 35.7 percent by the end of Fiscal Year 1992. The C&P service backlog soared to 535,135 in Fiscal Year 1992 compared with 391,743 in Fiscal Year 1991. C&P service projections for Fiscal Year 1993 show a pending workload of approximately 800,000 cases. Equally disturbing is the number of claims pending at VA Rating Boards. On October 1, 1991, there were 43,540 claims pending at Rating Boards throughout the country, currently that number stands at 89,000.

A 1991 study of VA's telephone service reveals a blocked call (busy signal) rate of 25 percent of local calls and 36 percent of 800 service line calls. During Fiscal Year 1993 it is estimated that 4 million calls to VA will be blocked with an additional 11 percent of individuals who call VA abandoning their calls after being put on hold and not receiving service.

VA's Vocational Rehabilitation and Counseling (VR&C) service expects a 20 - 25 percent increase in the number of veterans participating in a vocational rehabilitation program by the end of Fiscal Year 1993. Additionally, as a result of legislative changes which created a counseling benefit for separating service members, the educational and vocational counseling workload within VR&C will increase by approximately

400 percent by Fiscal Year 1994. This equates to approximately 500,000 service members, veterans and eligible dependents of veterans receiving vocational counseling.

BVA's response time -- the number of days it takes to render decisions on pending appeals during a year -- equaled 189 days at the beginning of FY 1992 and had increased by more than 50 days to 240 at the beginning of FY 1993. BVA's average processing time -- the average number of days BVA takes to produce a decision -- has also increased. In FY 1991, the processing time was 160 days; in FY 1992, 179 days; and, in the first two months of FY 1993, 218 days. Based on current staffing levels, it is projected that BVA's response time would be more than 550 days at the end of FY 1994.

Further examples of VA's inability to process VA benefit determinations in a reasonable time frame can be found in the "Independent Budget for Veterans Affairs 1994," copies of which have been supplied to the Committee. As in prior years, the Independent Budget also provides reasonable estimates of the resources needed to restore good service to veterans and their families.

We wish to state here that our purpose in pointing out the deficiencies within VA's Veterans Benefits Administration should not be construed to reflect negatively upon VA employees. To the contrary, DAV wishes to acknowledge the efforts of those dedicated VA employees whose tireless efforts too often go unnoticed.

Mr. Chairman, in an effort to provide the Subcommittee with an up-to-date assessment of the problems being faced by VA's Compensation and Pension Service, DAV convened a meeting of DAV, VA and House and Senate Veterans Affairs Committee staff. The participants at this full day meeting included: DAV National Service Officers, National Appeals Officers and Judicial Appeals Representatives; a VA Regional Office Adjudication Officer, Rating Board Specialist and Hearing Officer; and Majority and Minority staff from the House and Senate Veterans Affairs Committees.

During our roundtable discussion, a wide variety of topics regarding VA's compensation and pension claims adjudication process were discussed. It was the consensus of opinion that there are no "quick" fixes. Likewise, DAV and VA regional office employees unanimously agreed that the bottle neck in the adjudication of compensation and pension claims is at the rating board.

The rating board function within the claims adjudication process is the most time consuming and requires the greatest degree of training. Simply put, more resources in terms of employees and enhanced automated data processing equipment, must be directed to the compensation and pension claims rating function at regional offices.

Of considerably concern to DAV is the fact that when asked to work overtime to help reduce the growing backlog of cases at the rating board, the rating specialist must do so at an hourly rate less than that paid for regular work hours. For example, VA rating specialists are employed at the GS12 level. A rating specialist with four years experience at the rating board has an hourly rate of $21.24. The maximum overtime rate, however, is $21.21. Long-term rating specialists can lose up to $4.00 per hour below their normal hourly rate by working overtime.

It makes little sense, not to mention the negative impact it has on morale, to ask employees critical to the claims adjudication process to work long hours for less money in order

to help reduce huge backlogs not of their doing. To the contrary, the claims backlog at regional offices are a direct result of years of inadequate budgets for employees, equipment, and training.

Mr. Chairman, a number of causes of the claims backlog and ways to reduce it were discussed during the recent meeting of DAV, VA, and Veterans Affairs Committees staff. Major concerns expressed during this meeting included:

- The declining quality of VA compensation and pension exams - In their quest to comply with the 35 day turnaround time of VA examination requests, the quality of VA examinations has suffered, requiring a number of reexaminations. At some medical centers the loss of outpatient treatment slots for veterans has also occurred. Additionally, problems still remain at some VA medical centers regarding the timely submission of hospital records to VA regional offices;

- The need for more training for rating board and adjudication personnel regarding the impact of COVA decisions - New rating board members must receive a minimum of 12-18 months of intensive training, most conducted on the job. VA needs to increase the amount of training provided at the Veterans Benefits Administration Adjudication Academy in Baltimore, Maryland. The current funding level is approximately $2 million. The Independent Budget has recommended that the training academy be funded at $8 million. Investment in adequate training will pay dividends in terms of quality, morale and a well motivated and innovative workforce;

- Place a high priority on the development of claims - Too often claims are referred to rating boards without the evidence necessary to render proper decisions, causing a situation where rating boards must handle cases several times. By adequately training employees to properly develop claims we can improve the productivity of rating board members;

- Greater use of VA's authority to grant the so called "prestabilization rating" (38 C.F.R. Section 4.28) - A 50 percent or 100 percent disability evaluation may be granted without a scheduled VA examination for up to 12 months. This allows veterans to begin receiving compensation shortly following separation from service in those cases were VA has military medical records such as medical evaluation board or physical evaluation board documentation;

- A need for greater use of telephone contact with VA claimants - Often times weeks, even months, could be eliminated from the processing time of claims had VA adjudication employees telephoned a claimant to clarify an issue or obtain information inadvertently omitted from an application for benefits;

- A need for improved communication between VA and Social Security - Many times, especially in compensation unemployability claims or nonservice connected pension claims where veterans have been awarded disability benefits by the Social Security Administration, we hear that VA's requests for Social Security records takes a long time to be received by VA or are never received at all. If communication between VA and Social Security were to be improved,

the necessity for both agencies to conduct medical examinations could be eliminated.

Mr. Chairman, in addition to the above listed improvements that would increase the quality and timeliness of VA disability benefit determinations, some changes which would require legislative action have been mentioned. VA has informed us that approximately 250 employees could be freed up to work on compensation and pension claims by eliminating the income questionnaires to approximately 75 percent of individuals receiving means tested VA pension payments. We believe that this can be accomplished without jeopardizing the integrity of the VA pension program as VA does have the capacity to verify income through Social Security and IRS records.

DAV would also support a change in law which would provide an exemption to current overtime hourly rate restrictions for certain employees. We support the current exemption for VA nurses and believe that the current crisis in claims adjudication is justification for an exemption for individuals involved in the adjudication of veterans compensation and pension claims.

Mr. Chairman, the military reduction-in-force also has been noted as a major source of the increased compensation claim workload and is contributing to the ever increasing backlog of compensation claims. We know that the current Department of Defense (DoD) budget contains funding for training and job placement for defense workers displaced by our military draw down. It would seem only fair that VA also receive funds from DoD to assist in handling the increasing compensation workload created by the military reduction-in-force. It has also been pointed out that some of the individuals being separated from military service may be ideal candidates for employment within VA's compensation and pension service.

Additionally, it has been mentioned that the decisions of the Court of Veterans Appeals are responsible for the increased backlog of claims, particularly COVA's case law on the "duty to assist." Some have suggested that legislation be introduced to restrict VA's duty to assist veterans in the development of their claims. The DAV strongly disagrees with this position.

The duty to assist claimants in developing facts pertinent to their claims has existed in VA regulations long before it was codified in the Veterans' Judicial Review Act of 1988. Under the provisions of 38 C.F.R. Section 3.103(a), it is the obligation of VA to assist a claimant in developing the facts pertinent to his or her claim. The controlling precedent of COVA has merely refocused the VA's attention to this important aspect of the ex parte proceedings conducted by the VA and it has helped to delineate the limits of that assistance.

Specifically, COVA decisions have mandated that VA's duty to assist pertains to the following:

- Where the claim is well grounded and the VA is on notice of the existence of relevant private medical records, the VA must obtain those records.
- Where the claimant alleges facts that, if believed, might result in a compensable claim, the VA must provide assistance in obtaining the requested evidence.
- Where claims are reasonably inferred.
- Informing veterans of their rights and distributing full information about benefit entitlements.

- o Obtaining military records.
- o Obtaining private medical records.
- o Obtaining Social Security records of a disability for which a veteran seeks compensation or pension.
- o Informing a veteran that he may be eligible for benefits under a particular provision of law or regulation.
- o Informing a claimant of the existence and accessibility of records and obtaining them.
- o Conducting VA medical examinations.
- o Conducting special examinations recommended by VA physicians.
- o Conducting medical examinations to clarify diagnostic doubt.
- o Conducting a thorough and contemporaneous medical examination, one which takes into account the records of prior medical treatment, so that the evaluation of the claim disability will be a fully informed one.

The duty to assist as mandated by COVA certainly falls within the mission of the VA and the ex parte nature of its proceedings. Nor is the duty to assist limitless. In Godwin v. Derwinski, Vet.App. 419, 415 (1991), COVA stated that "[t]he duty to assist is not unlimited." It arises with respect to all relevant, pertinent facts where the claim is well-grounded (a prerequisite to the triggering of the duty-to-assist obligation as codified at 38 USC Section 5107(a)). Inherent in the duty-to-assist obligation is a requirement for the Secretary to respond to a claimant's request for VA assistance one way or the other. If the request is turned down because the information is not relevant or the claim is not well-grounded, the veteran then has the opportunity to convince the VA otherwise.

Mr. Chairman, we are encouraged by VA management's willingness to explore new and innovative ways to process veterans' compensation and pension claims. Their recognition that we cannot continue to "do business as usual" is evident by the scope and variety of VA adjudication pilot projects. An effort must be made to continue to foster even more Regional Office innovation to improve the delivery of compensation and pension to veterans and their families.

For example, in looking at ways to redesign the claims process, the New York Regional Office is participating in an OMB/White House initiative. This initiative will set up a case management/self-directed work team of highly trained individuals who would share responsibility for a service for product.

Another innovative approach to solving Regional Office timeliness problems is taking place at the Portland, Oregon office. In looking at ways to speed up the claims process, they are currently testing ways to combine certain functions of the adjudication and veterans' services divisions.

Mr. Chairman, many administrative changes to streamline and improve the way VA adjudicates claims have been identified and suggested. These changes alone, however, will not appreciably reduce the ever growing backlog of VA claims.

We believe that a crisis situation currently exists in VA's Compensation and Pension Service. In order to address this crisis, there must be a large increase of employees. The VA has estimated that it will take approximately 1,050 additional employees to reduce the claims backlog to 200,000 claims. These additional employees are but a small price to pay to restore some semblance of timely and quality benefit determinations to America's service-connected disabled veterans and their families.

In closing, we wish to again thank the Subcommittee for its willingness to place the highest priority on solving the claims' adjudication backlog crisis. Together, Congress, VA and the veterans' service organizations can and must solve this national crisis.

This concludes my statement. I would be happy to answer any questions you may have.

American Ex-Prisoners of War

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STATEMENT OF
THE AMERICAN EX-PRISONERS OF WAR

by

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for the

House Veterans Affairs
Subcommittee on Compensation
Pension and Insurance

on

Adjudication of Veterans Claims
and Appeals by the Department of Veterans Affairs

April 21, 1993

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STATEMENT OF CHARLES STENGER PhD

Mr. Chairman and Members of the Subcommittee

We very much welcome the opportunity to present written testimony on a matter of deep concern and we applaud your determination to give high priority to securing major improvements in the process by which veterans' claims and appeals are adjudicated.

Our remarks will be candid and critical. They are based on more than 10 years of struggling to obtain fair and equitable adjudication action. We have repeatedly found that established DVB policies and procedures are so narrowly structured that they prevent proper adjudication action even when manifestly supported by the total record. Our direct efforts with DVB and BVA to correct deficiencies have consistently been disregarded or rejected outright.

We have not been alone in this. Every veteran organization has been confronted by an intransigence that has denied or delayed benefits, particularly to combat veterans, to which they were manifestly entitled. Even the objective criticisms and practical recommendations of the Congressional-mandated POW Advisory Committee have been routinely rejected as unnecessary and unfeasible.

Despite all of these concerns, expressed over many years, DVB has defensively resisted making any real changes in policies and procedures. Instead, there has been a blind insistence that existing procedures work effectively for POWs and all veterans. They simply do not.

We call your attention to prior testimony by DVB officials before this subcommittee or the full House Committee on Veterans Affairs concerning possible additions to the presumptive list for POWs. With one minor exception, those officials repeatedly testified that existing procedures were adequate to adjudicate POW claims and that, at best, proposed additions were simply unnecessary. In doing so, they rejected manifest evidence to the contrary provided by many sources and VA's own POW Advisory Committee. In doing so, they reflected a refusal to objectively review the actual impact of their policies and procedures on POW claims.

We are indeed grateful that Congress--on four separate occasions found VA's position lacking in credibility and passed legislation adding five medical and two psychiatric conditions to the presumptive list.

We wish we could state that DVB--after these mandated changes---has responded in a manner consistent with the intent of Congress to facilitate legitimate POW claims, but we have not found this so. We <u>have</u> found that DVB issues, directives and informational releases to the field that reflect luke-warm acceptance and vague language lacking the explicit direction for full compliance. As an example, DVB communications to the Regional Offices on more than one occasion, substitute the optional "may" for the required "will" or "must". The latest is Training Letter 93-1, dated January 26, 1993, concerning residuals of cold injury and the requirement to accept lay evidence as sufficient proof when consistent with the known circumstances under which the veteran served.

As a result, adjudicators are often slow to approve legitimate claims or find narrow bases for denying service connection for even a presumptive condition. If the veteran or his service officer persists, favorable action is usually obtained after many additional months of frustration and delay.

In the past, DVB has always responded to criticism of this type as either in error or an isolated instance. As a result, Congress has found it difficult to follow up such complaints. However, we are grateful that the US Court of Veterans Affairs (COVA) has frequently reached the same conclusions regarding DVB deficiencies.

COVA has noted the "traditional" failure of DVB adjudicators to apply 38 CFR 3.303 (d) entitled "post-service initial diagnosis of disease" which authorizes service connection anytime after service when the claim is supported by direct evidence. Instead, DVB has used the general presumptive one year after service period as a <u>restrictive</u> limitation when the clear intent of the law was to liberalize adjudication action during this time. This is only one of many deficiencies COVA has found that DVB is not fulfilling its mandated role to help veterans obtain legitimate benefits.

Mr. Chairman, it is evident that DVB has consistently narrowed the intent of Congress with respects to benefits legislation. The reason seems to be a cynical assumption that veterans, as a whole, will exploit benefits opportunities and, in order to

protect against such abuse, DVB has, in practice, long assumed an adversarial role rather than its mandated role to assist the veteran. This concern, over many years, has become institutionalized into attitudes and practices that deny many veterans legitimate benefits. These long-standing practices are particularly unfair to combat veterans, including POWs, since the service records are more likely to be lacking in detailed information, including explicit medical records covering the entire period of service. As a consequence, veterans who risked their lives for their country have the greatest difficulty in obtaining fair and equitable resolution of their claims. This is an even greater problem for POWs whose records are typically inadequate or incomplete.

We would be happy to again provide examples of this problem, as we have done in the past. The bottom line is regulations enabling the POW to provide evidence in lieu of inadequate existing records are consistently given little or no weight in the adjudication process.

The current actual adjudication practice--at least as they affect POW claims--reflect adversely on VA in terms of its mission, are extremely frustrating to POWs; and are often not cost--effective when the total cost of protracted hearings and appeals are weighed against the cost of the benefits awarded to the veterans.

In closing we want to state that actual DVB rating practices do not fit the reality of the POW experience and may not do so for many combat veterans. Yet we see no initiative on the part of DVB officials down to the present to modify excessive restrictive policies that permeate the entire benefits system to the detriment of deserving veterans. We further believe that DVB field employees would welcome explicit direction that permit them to apply rating practices in a manner that would assure fair and equitable treatment of POWs and other combat veterans.

Thank you.

American Ex-Prisoners of War

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ASSESSMENT OF ADJUDICATIVE PROCESS
AND
SUGGESTIONS FOR IMPROVEMENT

MARY LEE FIELDER

The adjudicative process at the Regional Office level is fragmented in most instances. A clerk reviews a claim, requests evidence obviously necessary for a decision, and gives a 60-day time frame for submission of that evidence. If evidence is available through the DVA (e.g., service medical records or records of treatment at DVA facilities or other Government agencies), the clerk also requests that. No further review of the case takes place, in many offices, until receipt of some or all of the evidence. Depending upon the workload of that particular office, it still may be several weeks before a claim is actually reviewed by the rating board. Assuming it is complete, dictation of the rating follows, and the finished product is received in 3 to 7 days, again depending on the workload of the transcriptionists. The claims folder, with the rating decision attached, is then sent to the service organization which holds power of attorney and they review and return it within 2 to 3 days. When the folder once more reaches the Adjudication Division, it awaits an adjudicator to dictate to the veteran the actual decision.

To compound this problem, all those involved in the process are "on production"--meaning they are expected to complete X number of actions in a given day. This may be a valid measurement for simple, repetitive tasks, but it can have a chilling effect on a conscientious rating specialist with a complicated claim which may require an entire day to review, seek medical advice, decide, and dictate. Quantity should never be more important than quality. Numbers for the sake of mere numbers actually increase the workload, as this leads to hasty decisions which will more than likely be appealed.

To streamline this process, a team approach could be used. The rating specialist should review the claim, pick up the phone and call the veteran, explaining what is needed and why. Realistic times for submission of evidence could be used--always letting the veteran know he could tell the Regional Office of any difficulties he experiences in securing that evidence, and request assistance if needed. As is now done in some offices,

the service organization representative could come to a designated location in the Adjudication Division, review the file there, and it would be ready for dictation. The rating could be so written that the dictated letter to the veteran would fully inform him, in easily understood language, of the decision on his claim and the reasons for that decision. Proper handling here could greatly reduce the number of appeals. For example, if a veteran is rated at the maximum evaluation for a specific condition, and he is told of that fact, he would not likely appeal that decision.

For several years the Regional Offices have been told to "work smarter", meaning that the numbers of personnel to process claims have not kept pace with the ever-increasing claims of an aging veteran population. The most sophisticated equipment can help some aspects of claims processing--but the cold hard fact remains that machines do not exercise judgment, and rating specialist training is a long-term process. Too many times a hard-working Regional Office clerical employee is promoted beyond his/her level of competence, and shoddy decisions wreak havoc in some hapless veteran's life. Granted that the final decision MAY be favorable--that claim was mishandled and months and sometimes years of emotional and mental distress are added to the cost of claims processing. A DVA file clerk who has some typing skills can transfer to the post office as a mail handler and earn as much as a DVA adjudicator who must use intellectual skills and much training to handle an extremely complex set of laws. The increasing complexity of the VA laws and regulations staggers the thinking of any observer--perhaps specialization is the answer to this problem.

The position of the Hearing Officer in the Regional Office simply adds one more layer to claims processing in an appeal. A decision by the Hearing Officer frequently is not made for 6 to 9 months after the date of the hearing, while additional evidence and testimony or statements are received. Then if the decision is unfavorable, the claim still must go to the Board of Veterans Appeals. If the appeal is allowed, more often than not it is because new evidence is secured which, had it been available to the rating board, would have resulted in allowance rather than denial of the claim. When he makes a favorable decision, the Hearing Officer must refer the claims folder to the rating board to dictate a revised rating. His expertise would better serve the veterans if he were rating cases.

The impact of COVA on BVA and, in turn, on the Regional Offices, cannot be overstated. The Regional Office is forced as a result to request evidence they may know from past experience is either unavailable or of no relevance to the issue in question. Somewhere there needs to be a balance between common sense and legality, if we ever hope to stem the tide of ever--increasing delays in final decisions.

The paper presented by Dr. Charles Stenger, entitled Brief Review of Existing and Persistent Deficiencies in Department of Veterans Affairs Benefits & Services to Former Prisoners of War as of Jan. 1993," a copy of which is attached, presents compelling statistics and suggests a much more humane approach to the handling of claims of former prisoners of war than is now used. We feel the DVA should be directed by Congress to make use of the studies referred to by Dr. Stenger, and other widely accepted medical principles to establish service connection for additional conditions not listed under the presumptive provisions of the law but which medical experts acknowledge may be secondary results of many of the experiences common to former prisoners of war.

Even when DVA disseminates what appear to be liberalizing provisions, they are many times couched in language which is either subject to interpretation on a local level, or which appears to make optional adherence to these guidelines. A recent example is a Training Letter issued in January 1993 regarding long-term results of cold injuries. The language therein states service connection "may" be granted if certain criteria are met--when it appears the intent was that service connection should be granted, given those criteria.

We recognize that establishment for former prisoners of war of service connection for such conditions as heart disease and diabetes would be costly. Yet when one considers the administration costs of the numerous appeals resulting from considered opinions of medical experts, discounted by DVA in their adjudicative process, and the dwindling ranks of this group of combat veterans, how does one put a price-tag on allowing their few remaining years to be lived in a greater degree of comfort and peace of mind than they have endured for the many years that large numbers have been forced to fight the Government they so willingly fought for some half a century ago?

American Ex-Prisoners of War

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BRIEF REVIEW OF EXISTING AND PERSISTENT DEFICIENCIES IN DEPARTMENT OF VETERANS AFFAIRS BENEFITS & SERVICES TO FORMER PRISONERS OF WAR AS OF JANUARY 1993

Charles A. Stenger, PhD

National Consultant, American Ex-Prisoners of War

OBJECTIVE

To delineate long-standing deficiencies; identify why they persist; and to indicate how they can be corrected in time to help the small number of living prisoners of war who now average well above 65 years of age.

PERSPECTIVE

First of all, POWs are combat veterans who fought under the very worst circumstances prior to capture. Second, after capture the enemy continued to directly inflict damage by subjecting the POWs to many, if not all, of the following:

inhumane treatment	*starvation*	*deprivation*
degradation	*torture*	*gross neglect of wounds*
brutality	*exposure*	*gross neglect of illnesses*

Throughout captivity POWs had to cope with the daily threat of injury or death and the ravages of life-threatening illnesses for which they could expect no care. They had to endure the tremendous emotional stress of trying to survive under these circumstances that, for many also included forced labor regardless of their physical condition.

Expert opinion is unanimous that POWs, who survived captivity, have not escaped enduring adverse consequences to mind and body. Such consequences may be delayed or gradual and can involve any body system as well as the emotional well being of survivors. The NAS Study published in 1992 categorizes this as the "disease burden" of POWs.

AFTER REPATRIATION

POWs were typically recovered in large groups by frontline US forces. They invariably received warm and empathic welcomes yet were rarely hospitalized or even provided any medial care despite their often obvious poor physical condition. Grateful to be free and conditioned to living with serious illnesses, few POWs thought to complain or seek treatment on their own initiative. Nor did they have records of wounds or injuries prior to or after capture, or of the many illnesses suffered during confinement.

At repatriation centers they were deloused, given new clothing, and provided ample food. No routine, systemic medical examinations were provided then or later and few took the initiative of going on sick call.

The bottom line is most POWs received no medial treatment or examination from the time of repatriation until the time of discharge from service! During the routine, group medical examinations conducted at separation centers POWs were simply mingled with other servicemen. At these centers it was customary to warn all being processed that discharges would be delayed if they indicated they had suffered injuries or illnesses during service! As a result, few POWs admitted their captive status or volunteered that any injuries or illness had been suffered. They were wholly unaware of the great dependence that would be placed on such records after service.

Once returned to civilian life POWs typically continued the conditional behavior of trying to make it on their own without seeking help from DVA. However, most naively believed that, given their combat and POW experiences, help would be immediately forthcoming when requested.

STATISTICS

During WW1, WW11, Korea, Vietnam and Persian Gulf over 142,000 were captured. Of these, 125,000 escaped or survived until repatriation. As of January 1, 1993, approximately 66,000 remain alive as a very small part of the total veteran population. Though small in number, they remain a unique group in terms of complex medical needs and emotional problems. POWs remain an even greater problem for the adjudication of disability benefits in a system that relies heavily on service medical records or readily identifiable cause-and-effect medical and psychiatric conditions.

RECENT DEVELOPMENTS

The considerable publicity surrounding VN POWs in the mid-70s caused DVA and Congress to take a fresh look at past efforts. Congress mandated a study in 1978 which was completed by DVA two years later. That study was excellent in many respects. It documented the inadequacy--or total absence--of service medical records pertinent to the possible health consequences of the POW experience. It also documented directly and through existing research studies that POWs, as a group, were having far greater medical and emotional problems than other combat veterans.

In addition, this study indicated that, for these reasons, existing adjudication procedures may be denying many POWs benefits to which they should be entitled based on their whole record--and general knowledge about the effect based on the adverse circumstances under which they were held captive.

DVA's POW Advisory Committee strongly recommended that changes in adjudication procedures were imperative. Despite this, DVA officials repeatedly testified before Congress that the adjudication system was working for POWs and, at best, proposed changes were unnecessary. However, based on a preponderance of the evidence to the contrary Congress rejected the DVA position and added benefits through four laws passed from 1981 to the present. (PL 97-37, PL 98-233, PL 99-576, and PL 100-322). DVA did, however, support legislation that opened the health care system to POWs whether or not they were formally service connected for any condition.

The five medical conditions and two psychiatric conditions have benefited many POWs by service connecting them for conditions that were routinely denied favorable action prior to these laws. Nevertheless, in practice, long-standing adjudication procedures still result in long delays or denials resulting in appeals to BVA. The fact is, DVA has yet to modify adjudication procedures to fit the reality of the POW experience. For example, the concept of reasonable doubt is narrowly tied to medical evidence in the record. If there is no "evidence" there is no basis for applying this concept!

DVA has rejected much research evidence as failing to meet scientific standards and has rejected the POW Advisory Committee recommendation that epidemiological as well as clinical research be acceptable. In reports to Congress DVA stated it would change evidentiary requirements only when research that meets the highest scientific standards--and can be replicated is done. It steadfastly rejected arguments that, many years after the POW experience, such studies are almost impossible to do and would be extremely costly in terms of the limited results that could be obtained.

Nevertheless, from 1985 to 1992, DVA in partnership with NAS attempted to carry out such a study. Design flaws and sampling problems that would negate any likely scientific merit were pointed out yet were ignored. The study, entitled "The Health of Former Prisoners of War", was published in late 1992. The principle author, Dr. William Page of NAS, describes the research as a long, complex study that provides interesting, sometimes "noteworthy" findings yet does not meet acceptable statistical standards for the results to have true scientific validity. He characterizes the study as having "descriptive" value. He pointed out several findings that suggest an etiological relationship between certain POW experiences and several specific medical conditions. However, under current DVA requirements this will have no impact on the adjudication of POW claims!

RECOMMENDATIONS

It is strongly recommended that adjudication policies and practices for POWs be revised as suggested in the following paragraphs. It is known that POWs are at risk for a wide range of medical problems in later life yet medical knowledge that would permit examining physicians to conclude that a clear cause-and-effect relationship exists for a specific medical condition is still lacking. Add to this the dependence on records known to be lacking or inadequate for adjudication purposes and it is obvious POWs are not being fairly served by policies currently in place.

Proposed adjudication could focus on the whole record rather than attempt to find a specific tie to service experience. For example, did the POW have a particular medical condition, such as hepatitis, during captivity? If so, a current liver condition--unless conclusively rebuttable--would be considered service-related. The word of the Veteran, where consistent with general knowledge about conditions and disease in a particular prison camp, would simply be accepted as sufficient proof. It is noted from the 1992 research report POWs actually <u>under-reported</u> physical illnesses compared to physicians who directly examined them.

Another guiding question could be "was the Veteran exposed to starvation or prolonged nutritional deficiencies during captivity for which a causal relationship to a current condition is reasonably possible though not technically provable on the basis of current medical knowledge?" If so, service connection could be granted.

Thus, any current condition that could reasonably be assumed to be consistent with this general type of evidence would be eligible for service connected.

The advantage of this approach is that it is fair and equitable in contrast to the current system that routinely denies benefits. It is also cost-effective. The cost in time of medical personnel, adjudicators, BVA staff and administrative staff at all levels is considerable, often more than any possible payment to the POW in his remaining years.

In addition, DVA may overcome the negative image it now has with the POW community and fair-minded service officers who believe, without reservation, that the particular condition in question <u>is</u> related to POW trauma. The result is, technicalities aside, DVA is failing in its basic obligation to this small group of veterans.

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STATEMENT OF EDWARD J GIERING
NATIONAL DIRECTOR

BACKGROUND

After years of indifference to the medical problems of former POWs by the Veterans Administration, Congress approved a Study of Former POWs which resulted in Congress enacting what became known as "The POW Bill" PL 97-37, in 1981. The VA issued their circular to their Regional Offices which was very supportive of the veteran's situation, in that the veterans did not usually have medical documentation of their ailments.

The law among other things, authorized the former POW to voluntarily undergo a special physical and mental exam at VA facilities, this was the "POW Protocol Exam". The VA authorized the POW to apply for compensation for his physical disabilities and certain disabilities were named in the original VA circular and in subsequent circulars as Presumptive Conditions for former POWs. Secondary conditions could also be held to be Service-Connected.

PROBLEM

After 1981 the VA held clinics for physicians and medical personnel to explain what disabilities the POWs would have and how they could be service connected. Unfortunately, many of these physicians are no longer performing these examinations for various reasons. Physicians who are now performing these exams for compensation purposes have no background from what I have seen, no interest in learning about POW Presumptive Conditions or the Protocol Exam. This seems to be prevalent all over the country with a few exceptions. Physicians performing the exams have told me that in their opinion veterans in their sixties or seventies have illnesses and they see no relationship to their war-time experiences of 45 or more years ago. In fact, several VA physicians said that extreme malnutrition has no long-timer effect on the body and can be cured quickly with vitamin doses.

When the DOVA rater tries to use the result of such exams he is unable to rate the POW properly. Another problem is that there are not POW Rating Boards at every DOVA office who would have, hopefully, more expertise in these matters.

The result is that the Former POW does not receive a physical and psychological exam by physicians who have knowledge of POW presumptive conditions or the administration of the Protocol Exam. The result of such exams insures that the VA rater will not be able to award compensation to the veteran in spite of the intent of Congress, PL 97-37 or VA circulars. Former POWs are passing away with little or no compensation ever having been awarded. To add to their frustration is the knowledge that some POWs who live in another part of the country are receiving the benefits Congress intended that they have.

RECOMMENDATION

It is doubtful that the DOVA will again decide to train physicians and other medical personnel and DOVA rating personnel in every hospital in the country. It would not be cost effective since there are only 66,000 former POWs from all wars alive at this time.

Therefore, it is recommended that <u>one</u> DOVA hospital in each region of the country be staffed with physicians and medical personnel who have received thorough training in POW disabilities, diseases and psychological problems. It would also be hoped that these personnel would be selected on the basis of strong interest in POW medical problems and not be personnel under contract to perform a few physical exams a month for the VA.

Also, it is recommended that DOVA rating personnel be conveniently located, who would form a special POW Rating Board and would actually have special knowledge of POW disabilities. As an example, I would recommend that Boston VA would examine all POWs located in the New England area.

CLOSING

Time is running out for the WW II Former Prisoner of War to receive any benefits. Most POWs surviving are from WW II but they are in their late sixties and seventies. I have even today veterans who have not taken the POW Protocol Exam, and have either no compensation from the DOVA or only 10% or so. One thing is clear, and this is that there exists real injustice here which cries out for correction. I have received much understanding from the DOVA in Washington about this problem but very little action is taken to correct the situation in the field.

I hope the foregoing is of help. I have been working with these problems since passage of the POW Bill in 1981, and for the last five years as a Service Officer for the State of Connecticut in which I have handled many POW claims. Action is needed now to correct this injustice.

WRITTEN COMMITTEE QUESTIONS AND THEIR RESPONSES

RESPONSES FROM THE DEPARTMENT OF VETERANS AFFAIRS

QUESTION FROM THE HON. TERRY EVERETT
APRIL 21, 1993, HEARING

Question 1:

As recommended by a few of our veteran service organizations in their testimony, is VBA considering reports of private physicians in the adjudication of claims? And, if not, why not?

Answer:

Under VA regulations a statement from a private physician which includes clinical substantiation of a diagnosis through such medically acceptable diagnostic techniques as pathological studies, X-rays, and laboratory tests may serve as evidence establishing reasonable probability of a valid claim. It also may be accepted for rating purposes in pension claims, aid and attendance claims, and a child's claim for permanent incapability of self-support.

We are now preparing an amendment to 38 CFR 3.326(d) to permit acceptance of a private physician's statement for rating purposes in claims for increased compensation due to the increased severity of service-connected disabilities. A statement from a private physician which otherwise meets the requirements of the regulation contains medical evidence acceptable for rating purposes with no need for verification through a VA examination. Acceptance of this type of medical evidence will permit earlier decisions on claims by removing the need for VA to schedule, conduct, and review the results of an additional examination.

QUESTIONS FROM THE HON. MICHAEL BILIRAKIS
APRIL 21, 1993, HEARING

Question 1:

Your testimony states that VA has begun to test a number of new ideas to improve timeliness of claims processing and service. Obviously, while we support the continuous evaluation of new technology, what we are most interested in is the ability of such technology to improve services to veterans.

What is the general time line for these initiatives?

Answer:

The first phase of the Expert system which applies rule-based technology to the development of original disability compensation and pension claims should be completed by March 31, 1994.

The Control of Veterans Records System (COVERS), a system for tracking the location of veterans' records using barcode technology, is being taken from the Wang platform, where difficulties were encountered, and converted to a PC platform. That conversion should also be completed by March 31, 1994.

We are converting the pattern letters and paragraphs used for decision notifications and claims development, currently generated through the benefits delivery network, into a Word for Windows word processing format, which should allow easier and quicker completion. Pilot testing should take place in January 1994.

Testing of a voice recognition system used to create rating decisions, Statements of the Case, and Supplemental Statements of the Case is taking place at this time. Because of the expense of voice recognition hardware and software, we are exploring alternative methods to input key words or phrases to generate completed documents. We hope to develop a working model by March 31, 1994.

A prototype of an automated manual system utilizing CD-ROM technology is currently being tested. VBA is conducting a requirements analysis to determine whether CD-ROM is the best medium for accessing information. Based on the recommendations of a contractor working on that analysis, an alternative prototype will be developed and tested. We expect to have a final evaluation by February, 1994.

The AMIE system which automates the exchange of medical information between regional offices and their associated medical centers, has been in use for a number of years at a some regional offices. The first of approximately six packages of enhancements is scheduled for release in late July 1993. It is anticipated that the second package of enhancements will be released in the fall of 1993.

Question 2:

After evaluation of the various initiatives will VBA have some centralized decision making to determine which of these initiatives get implemented and which do not?

Answer:

VBA expects these initiatives will be successful. A panel of experts composed of individuals from regional offices, services within Central Office and others will evaluate the successfulness of each initiatve and submit a report to the Under Secretary for Benefits.

Question 3:

With so many evaluations going on at once how can we be assured that only the best initiatives will be implemented?

Answer:

No final approval or adoption of any initiative will be made without exhaustive testing and analysis. This will ensure that the various systems selected will be in a format that meet our requirements for providing the best possible service to claimants and for allowing for enhancements as changing circumstances warrant.

Question 4:

Is AMIE available at every VARO, and is it able to communicate with every VA medical center? If not, when will AMIE be fully implemented?

Answer:

The AMIE system has been fully implemented at each regional office. The regional offices, however, generally are linked through AMIE only to medical centers within the same state. Some offices have determined the need for an AMIE link to medical centers in nearby states, particularly with regard to compensation and pension examination requests. Although the AMIE Expert Panel (AEP) has established as its primary goal a system which links all regional offices with all medical centers, before this is possible, VBA must convert its current Wang-based AMIE system to a PC based system.

Question 5:

When will evaluation of "COVERS" be complete? What has been the effect thus far on timeliness of claims processing?

Answer:

COVERS is currently being used at five regional offices. Because the current Wang platform is unable to adequately support COVERS, futher deployment has been postponed until COVERS can be converted into a PC based system. That conversion should be completed and deployment resumed by March 31, 1994.

Question 6:

What is the estimated cost of full implementation of COVERS? Will there be a corresponding reduction in manpower hours associated with its implementation?

Answer:

The C&P Service defers to VBA's Administrative Service and to (20M) on the costs associated with implementation of COVERS.

We believe that COVERS will improve claims processing workflow (and consequently claims processing timeliness) by providing better claims folder control, but we do not anticipate significant manpower savings.

Question 7:

When will development and testing of the "Expert System" be complete?

Answer:

The "expert system" project, initiated in November 1991, is now virtually complete and has successfully shown that using rule-based technology offers an opportunity for complete and correct development of claims, elimination of piece-meal development and over-development, and enhanced communication to claimants. Building on prototype experience and using a phased-development approach, we anticipate implementing a production system for the first regional office in April 1994. After a test and evaluation period, the system will be exported to all offices.

Question 8:

Please provide more detail on the OMB/White House case manager/self-directed work team concept.

Answer:

A Self-Directed Work Team (SDWT) is a highly trained group of employees (usually from 6 to 15) who share responsibility for a service or product. SDWTs plan, set priorities, organize their work, coordinate with others, evaluate their own progress and take corrective action. Teams can also solve problems, schedule work and handle personnel issues. Each team member becomes accountable for the work of the entire team. Team members and the team coach need new concepts and skills in order to make SDWT work. The ultimate goal is for each team member to have the ability to perform every job required by the team to complete the whole job.

Question 9:

What efforts are being made by VBA to implement total quality management? What has been VBA's experience thus far with implementation?

Answer:

In an effort to improve C&P work processes and thereby improve our service to veterans, we are focusing on employee participation in the decision-making process through TQM. This has resulted in some major changes in operating procedures, as well as in management/employee working relations. Formal training was required at many levels to begin implementing the TQM concept. As we expand TQM to all facets of the adjudication process, continued formal training is required.

Question 10:

What percentage of your adjudication personnel are trainees?

Answer:

The veterans claims examiner (VCE), "Adjudicator", position is the basic direct-labor position within the Adjudication Division and the one for which data is most readily available. Generally two years of experience is required before a VCE, "Adjudicator", may be considered fully trained at the joruneyman level. As of March 31, 1993, 28.8 percent of the 1,146 VCEs had less than two years of experience. This compares to 35% in 1992, 50% in 1991, 35% in 1990, and 20% in earlier years. There are individuals in a trainee status in other disciplines within the Adjudication Division. For example, VCE's, "Adjudicators", on the Rating Board are called rating specialists. Currently, 30% of 600 rating specialists are trainees, that is, less than two years experience.

Question 11:

What is your turnover rate?

Answer:

The percentages of trainees mentioned in our answer to the previous question cannot be accurately interpreted to deduce a turnover rate. Hiring increases resulting from OBRA 1990 and from raising our basic staffing levels over the last few years account for the relatively high percentage of trainees. We do not have figures on how many of the trainees represent turnovers, i.e., replacements for departed employees. Anecdotal information from the regional offices indicates that they are experiencing fewer departures and greater ease in hiring a larger number of employees due to concerns over the slow economy.

Question 12:

What is the status of the development of the master veteran file which VBA and VHA could both access? When do you expect it to be in operation?

Answer:

Questions on the time frames associated with this project can be better answered by (20M).

Question 13:

What percentage of discharged service members file claims with your department?

Answer:

We do not have an actual count of discharged members who file VA claims. We do, however, maintain statistics on the number of originial compensation, pension and education claims received each year. Experience has shown that most of these original claims come from recent discharges. By dividing the number of claims received in a given year by the number of individuals discharged during the same year (DoD supplies us with this number), we obtain a ratio that we call the "claims filed rate." In 1992, the actual "claims filed rate" was 46%.

Question 14:

How can you possibly project your future FTEE requirements without this type of information?

Answer:

Although we do not have an actual count of discharged service members who file VA claims, we do maintain statistics on the number of original compensation, pension and education claims received each year. Experience has shown that most of these original claims come from recent dischargees. By dividing the number of claims received in a given year by the number of individuals discharged during the same year (DoD supplies us with this number), we obtain a ratio that we call the "claims filed rate." By monitoring the trends in these ratios and by applying the derived "claims filed rate" to DoD's separation projections, we can make fairly accurate estimates of our future workload and FTEE requirements.

Question 15:

Do you have any suggestions concerning administrative procedures which you might undertake to alleviate the backlog in claims processing?

Answer:

The steady increase in the C&P workload has caused an increased backlog of cases and longer periods of time to complete claims, especially in the rating boards. This situation will require some shifting of emphasis, such as moving work from Adjudication to other divisions and shifting work within Adjudication to free up manpower in areas with the largest backlog. Specific remedies include the following:

Proposed EVR Legislation - VA will request legislation to eliminate the statutory requirement that all recipients of VA pension or parents' dependency and indemnity compensation submit an eligibility verification report (EVR) annually. VA would retain the authority to require such reports where necessary. The proposed legislation would also make permanent VA's authority to obtain certain income information from the Internal Revenue Service and the Social Security Administration. Enactment of this legislation would allow VA to decrease the volume of EVRs by approximately 76% and would free 244 FTEE to work on the backlog of compensation and pension claims.

Service Medical Records Project - On October 19, 1992, the Army began shipping service medical records (SMRs) from the military installation where the soldier is separated directly to VA. This procedure will eliminate delays in obtaining SMRs and will facilitate locating them when the first VA claim is filed long after the veteran leaves military service. VA anticipates that other military services will join this initiative in the future.

Automated Medical Information Exchange (AMIE) - This initiative enables regional offices to communicate electronically with VA hospitals concerning hospital admissions/discharges and physical examination requests/findings. It not only saves time, but greatly reduces the flow of paper documents back and forth.

35-Day Timeliness Standard for Exam Requests - In FY 1992 VBA and VHA agreed to a standard which requires VA medical facilities to return a completed medical or psychiatric examination report within an average of 35 days after the exam is requested by the regional office. In June 1991 the average turnaround time was 56 days. In October 1992 it was 34 days.

Joint VA/DoD Task Force - A joint VA/Dod task force is searching for ways to improve the quality and timeliness of information transmitted to VA concerning induction/separation dates and character of discharge.

New Format for Rating Decisions - The Compensation and Pension Service recently developed a new rating decision format and issued new procedures allowing the narrative section of the rating to be incorporated via word processing into the notification to the claimant. This will improve productivity by reducing the amount of time adjudicators spend in composing and dictating claimant notifications.

Expert Systems - VBA is developing an "Expert System" to help identify and request all necessary evidence during the first review of the claimant's application. This automated program will enhance quality, consistency and timeliness of claims development. We expect to begin installing the production system in the regional offices in April 1994.

Voice Recognition Technology - VBA is developing a prototype voice recognition system that will enable rating specialists to dictate ratings to a computer program, which will then transcribe the spoken words into a word processing document. This will eliminate much of the time it now takes to dictate and transcribe a rating or Statement of the Case. The final evaluation and report on the prototype system will be completed in August 1993. The contractor for this project is also studying other possible technologies for the input of ratings, and is investigating the possibility of using voice recognition technology in other areas of the regional office.

Letter Generation Via Personal Computers - VBA is currently developing a prototype system using personal computers as a letter generation system that will be flexible enough to meet the demands of constantly changing legal requirements and an increased workload.

Claims Folder Control System (COVERS) - In 1990 VBA developed a bar-coding system to facilitate the management of claims folders within the regional offices. The system was tested in five regional offices. VBA is now in the process of converting the this project from a Wang-based to a personal computer-based system. Provided that Stage 1 of Modernization progresses as scheduled, we expect to have the COVERS system installed in the regional offices by April 1994.

Automated Manuals - VA is developing a program that will allow automated access to all VA directives, which will be available at the touch of a key and will contain the latest information. Currently the rating board in the Little Rock regional office is testing CD-ROM technology as a means of accessing claims adjudication manuals. The results of this test will be evaluated to determine the best method to continue with the automation project. A final prototype evaluation report is targeted for February 1994.

Special Workflow Study Groups - VBA is examining its organizational structure and claims adjudication process. Alternative work organization experiments are underway in several Adjudication Divisions. Each regional office is utilizing Total Quality Management (TQM) techniques to involve workers at all levels in identifying, analyzing, and solving problems.

Training - To reduce the drain on regional office resources and impart consistent information on and interpretation of VA directives, we are pursuing several training initiatives. Through classes at the VA Training Academy in Baltimore, we provide a foundation in adjudication processes for new employees and refresher training for experienced personnel. We are preparing training packages at Central Office and exporting them to the regional offices. We also are preparing electronic and computer training aids such as video tapes, guides for video conferencing, and computer-assisted training and testing.

Question 16:

Are there any regulations which could be rewritten or modified to assist in this effort?

Answer:

We currently are developing a proposed regulatory amendment to allow the use of private physician's statements in rating claims for increased compensation. Statements from private physicians which otherwise meet our requirements contain medical evidence acceptable for rating purposes with no need for verification through a VA examination. Acceptance of this type of medical evidence will permit earlier decisions on claims for increase by removing the need for VA to schedule, conduct, and review the results of an additional examination.

We also have submitted to OMB for final clearance prior to publication a regulatory amendment to allow payment of death benefits to a surviving spouse based upon an uncertified copy of the public record of marriage, provided that the veteran was receiving compensation or pension for the spouse as of the date of death and that the uncertified marriage certificate is part of the VA record on the date of the veteran's death.

As the need or desirability for other changes becomes apparent, we will initiate action to implement them.

Question 17:

Have you considered the possibility of having a more experienced individual review claims upon initial receipt in order to determine how complex they are and what action should be taken on them?

Answer:

Several regional offices are testing a variation of an initiative combining the efforts of the VCE and the Veterans Benefits Counselor (VBC). Those involved in this initiative provide up front a more complete and expert review of applications and evidence in order to better assist the claimant and reduce claims processing time. A shorter waiting time improves services generally and expedites implementation of favorable decisions.

Some regional offices have created Rating Administrative Technicians (RAT) who assist in the control of work destined for the rating boards by preventing cases from reaching the rating board before they are ready for a final rating decision. The RAT screens claims, performs all necessary development, and requests physical examinations.

Question 18:

Are you using electronic mail for the dissemination of directives from Central Office to your Regional Offices?

Answer:

Electronic mail is used to disseminate information that is urgent or time sensitive such as directives that will have an immediate impact on claims processing. The Administrative Support Staff sends signed circulars to the regional offices via E-mail. Because copies of E-mailed directives must be made for each employee at the regional office, lengthy directives, such as manual changes are sent out in hard copy form. As mentioned earlier, we are exploring technology to automate our manuals which would permit electronic transmission in lieu of printing.

Question 19:

Would your Department support the discontinuance of the requirement for "Certified" copies of marriage certificates, divorce decrees, birth certificates, etc. ?

Answer:

Before we could support the discontinuance of this requirement, it would be necessary to conduct an analysis. Some regional offices are currently gathering information that we can use. Based on the results of our analysis, we could consider discontinuing this requirement. However, a pending regulatory amendment will provide some relief in this regard, as outlined in our answer to question 16.

Question 20:

Does VBA have a means by which information can be extracted from a veteran's case file upon his death so that his widow, who files a claim for DIC doesn't have to provide duplicate information?

Answer:

Information about both the veteran and his spouse, accumulated in the claims folder during the veteran's lifetime, remains in the claims folder after the veteran's death and is available when the surviving spouse files a claim for death benefits. Under the master veteran record concept, data pertaining to each dependent will be accumulated and maintained in the automated file.

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