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BOARD OF VETERANS' APPEALS ADJUDICATION PROCESS AND THE APPEALS MANAGEMENT CENTER

HEARING

BEFORE THE

SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS

OF THE

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

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BOARD OF VETERANS' APPEALS ADJUDICATION PROCESS AND THE APPEALS MANAGEMENT CENTER

TUESDAY, SEPTEMBER 25, 2007

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS,
COMMITTEE ON VETERANS' AFFAIRS,
Washington, DC.

The Subcommittee met, pursuant to notice, at 2:05 p.m., in Room 334, Cannon House Office Building, Hon. John J. Hall [Chairman of the Subcommittee on Disability Assistance and Memorial Affairs] presiding.

Present: Representatives Hall, Hare, Berkley, and Lamborn.

OPENING STATEMENT OF CHAIRMAN HALL

Mr. HALL. Good afternoon. I would like to welcome you all here to this hearing of the House Committee on Veterans' Affairs, Subcommittee on Disability Assistance and Memorial Affairs, and ask if we could all rise for the Pledge of Allegiance. The flags are located at both ends of the room.

[Pledge of Allegiance.]

Mr. HALL. Thank you. First of all I would like to thank the witnesses for coming today to appear before the Subcommittee for our discussion about the Board of Veterans' Appeals (BVA) and the Appeals Management Center (AMC).

I know the challenges that are presented by the growing backlog at both the BVA and the AMC are troubling for us all. Making the administrative appeals process better and quicker for our veterans is a shared priority and I thank you for joining me and the Committee in helping to find workable solutions.

As many of you know, the Board of Veterans' Appeals was established in 1933 and was designed to provide the veteran with an opportunity to appeal a decision issued by one of the 57 regional offices (RO) at the VA. No one disputes the importance of this step in the claims process, but unfortunately it has become more foe than friend to some of our veterans who are appealing a regional office decision.

Moreover, it seems to be an unspoken belief held by many veterans and their advocates that given the variances and RO level decisions an appeal to the BVA may almost be a necessity. However, appealing an RO decision presents many challenges to our veterans. With a current backlog of over 39,000 cases, the average

length of an appeal filed with the BVA is an amazing 761 days. This is after the 240 days a claim spends at the regional office. This inefficiency is only exceeded by the outcome of these long waits—a 71 percent denial rate by the BVA. Also, although the BVA claims a 93 percent accuracy rate, the U.S. Court of Appeals for Veterans Claims (CAVC) sets aside or remands over 70 percent of the cases appealed indicating a much lower accuracy rate in reality. It is clear from reading the BVA's Fiscal Year 2006 Chairman's Report that these percentages may not be based on the same statistics.

There are many reasons for the current 39,000 plus backlog at the Veterans Benefits Administration (VBA). First, as pointed out by several veterans advocacy organizations in their testimonies, an entity such as the BVA, which employs a system of rewards based on the quantity of work outputs rather than the quality of those work outputs, will soon become an organization that adopts the principle of quantity over quality, consciously or unconsciously.

The effort by the BVA to avoid remands is also yielding mixed results at best. Additionally, unless the U.S. Department of Veterans Affairs (VA) standardizes the training process for its raters, this often subjective system will continue to yield inequitable results. Most claims raters indicate that their major source of learning was on the job training. As the preliminary findings of the Veterans' Disability Benefits Commission indicate, over 50 percent of the raters believe that they are ill-equipped to perform their jobs. Over 80 percent of raters, and Veterans Service Organizations (VSO's), believe that there is too much emphasis placed on speed relative to accuracy. Also, the Institute for Defense Analysis (IDA), in its recent report of the analysis of variances in VA disability compensation, recommends that VA undoubtedly needs to: first standardize initial and ongoing training for rating specialists; second, increase oversight of rating decisions; third, develop and implement metrics to monitor consistency and adjudication results; and fourth, increase oversight and review of rating decisions and to improve and expand data collection and retention.

The IDA Report also indicates that the current STAR Program (Systematic Technical Accuracy Review) is insufficient to promote consistency and ratings across regional offices, as very little action has been taken on any trends found at region offices. Among other things, I would like to hear what the VBA intends to do to improve the STAR program as well as an update on its Expedited Claims Adjudication Initiative.

The increased work load at both the AMC and BVA is not lost on this Committee. The most recent Fiscal Year 2007 figures indicate that there are more than 18,300 remands pending at the AMC and over 39,206 appeals waiting for adjudication at the BVA.

Moreover, the BVA expects to receive up to 48,000 appeals through the course of 2007. As such, any increase in productivity has not been able to keep pace with the increase of appeals being sent to the BVA. So we are aware of the tall task that we are facing.

On a separate but related note, I am heartened by the fact that the Fiscal Year 2008 Budget Resolution allowed, and the Fiscal Year 2008 Military Construction-VA Appropriations Bill will pro-

vide, funding for 1,000 full-time equivalents (FTEs) to help with the growing claims backlog. This fact notwithstanding, I firmly believe that the only way to maximize VBA employees' effectiveness and lessen the backlog is to give them the necessary tools and training to provide accurate ratings.

To be clear, it is not my intention simply to point out the shortcomings of the BVA or the AMC. I think we should all abide by the underlying and stated principles of the entire VA system, which is to provide a non-adversarial system for awarding our veterans the benefits they have earned. We need to begin to see ourselves, the VA, Congress, VSO's and advocacy organizations alike as partners in fulfilling this mission.

I also firmly believe that with the expected surge in filings by returning Operation Enduring Freedom/Operation Iraqi Freedom (OEF/OIF) veterans, VA as the gateway for, and the creator of, the record that forms the basis for appeal, should amplify its role in improving the benefits claims processing and adjudication system to get our veterans off the appeals hamster wheel, a term that we have heard quite often.

I am looking forward to hearing testimony that sets forth recommendations that are consistent with producing the best outcomes for our veterans who are appealing RO decisions and improving the overall system of claims adjudication.

Thank you. And now I would like to recognize Ranking Member Lamborn for his opening statement.

[The prepared statement of Chairman Hall appears on p. 36.]

OPENING STATEMENT OF HON. DOUG LAMBORN

Mr. LAMBORN. Thank you, Mr. Chairman. I thank you for holding this hearing today on the Board of Veterans' Appeals and its role in the efficient processing of disability compensation claims. And I welcome our witnesses, especially Chairman Terry. And I thank you all for your contributions to the Veterans Affairs system.

As everyone is aware, the VA's Compensation and Pension backlog has reached an epidemic and disgraceful level. While I understand that there are numerous challenges facing the Board and the Appeals Management Center, both play a significant role in veterans waiting many months, if not years, for an accurate rating.

I agree with Mr. Smithson of the American Legion that we can't just look at the Board in a vacuum. Poor quality work at the regional office level results in much larger problems later in the appeals process. We must ensure that rating boards strive to achieve thoroughness and accuracy along with efficiency in their work. Doing so is a key step toward eventual elimination of the backlog.

I do want to commend Chairman Terry for the excellent work the Board is doing. They are deciding a record number of appeals this Fiscal Year. While your output has increased, the number of claims waiting to be reviewed, though, is still too high. While I agree that Congress needs to adequately staff the Board and the Appeals Management Center, I don't believe that hiring more people is the only solution.

I also acknowledge that there is no silver bullet that will make a significant and immediate impact on the backlog. However, I do believe that the system needs to be fundamentally changed. That

is why I am anxiously awaiting the findings of the Disability Commission that reports next month. While fundamental change is needed, I believe that we can take immediate, vital action by passing H.R. 3047 which I have introduced, the Veterans Claim Processing Innovation Act of 2007. H.R. 3047 will bring VA's compensation and pension system into the 21st century. By increasing accountability and leveraging technology at the Veterans Benefits Administration, this bill would improve the accuracy and speed of benefits claims and I commend it to the attention of my colleagues.

Several of the provisions of H.R. 3047 are recommendations from our witnesses today and I thank them for their support. I thank you, Mr. Chairman, for promising to hold a legislative hearing on H.R. 3047 next month and I hope that you will soon join two of our colleagues in cosponsoring this bipartisan bill.

I want to thank the witnesses for their testimony and yield back.

[The prepared statement of Congressman Lamborn appears on p. 37.]

Mr. HALL. Thank you, Mr. Lamborn for your thoughtful and insightful comments. And as you noted, we will be having a legislative hearing on H.R. 3047 next month. I am looking forward to that and to hearing testimony from some of our expert, our usual expert witnesses on that bill among others that we will be looking at on that day.

I would also like to welcome our panelists who are testifying today. Joining us on our first panel and if you could come up as you are called. Mr. Barton Stichman, Joint Executive Director for the National Veterans Legal Services Program; Mr. Richard Cohen, President of the National Organization of Veterans Advocates, Inc. (NOVA); Mr. Carl Blake, National Legislative Director for Paralyzed Veterans of America (PVA); Mr. Steve Smithson, Deputy Director of the Veterans Affairs and Rehabilitation Commission for the American Legion; Mr. Adrian Atizado, Assistant National Legislative Director for Disabled American Veterans (DAV); and last but not least, Mr. Eric A. Hilleman, Deputy Director of the National Legislative Service for the Veterans of Foreign Wars (VFW).

It is a large and extremely knowledgeable panel. As usual your comments are entered into the written record, so you can deviate or shorten them as you wish. We will recognize each of you for 5 minutes starting with Mr. Stichman.

STATEMENTS OF BARTON F. STICHMAN, JOINT EXECUTIVE DIRECTOR, NATIONAL VETERANS LEGAL SERVICES PROGRAM; RICHARD PAUL COHEN, PRESIDENT, NATIONAL ORGANIZATION OF VETERANS ADVOCATES, INC.; CARL BLAKE, NATIONAL LEGISLATIVE DIRECTOR, PARALYZED VETERANS OF AMERICA; STEVE SMITHSON, DEPUTY DIRECTOR, VETERANS AFFAIRS AND REHABILITATION COMMISSION, AMERICAN LEGION; ADRIAN ATIZADO, ASSISTANT NATIONAL LEGISLATIVE DIRECTOR, DISABLED AMERICAN VETERANS; AND ERIC A. HILLEMAN, DEPUTY DIRECTOR, NATIONAL LEGISLATIVE SERVICE, VETERANS OF FOREIGN WARS OF THE UNITED STATES

STATEMENT OF BARTON F. STICHMAN

Mr. STICHMAN. Thank you. I am very thankful that you invited us to testify this morning. Before discussing the Board of Veterans' Appeals, I would like to second the comments that I have just heard from both the Chairman and Congressman Lamborn about the fact that the solution to the dysfunctional VA System lies in large part in reforming the way the regional offices decide cases and process cases. I think if you had to concentrate on one of the three tiers of the adjudicatory process, the regional offices, the Board of Veterans' Appeals, or the Veterans Court, which reviews Board of Veterans' Appeals decisions, the regional offices are the most important. And they handle the majority of all the claims. And the problem is they are not deciding them accurately in the first instance. And part of the reason for the problems is the pressure put on them, on really all levels, to decide cases quickly. So while we all condemn the backlogs, there is a sliding scale here. There are two different things one has to weigh. Speed versus quality. And I worry a little bit when we concentrate only on the backlog and not on quality, because that is what encourages this hamster wheel system from continuing by great concentration on speed and not enough concentration on quality.

With that said, let me turn to my testimony on the Board of Veterans' Appeals. The most prominent fact when you look at the Board of Veterans' Appeals to evaluate its performance is the report card that the Court of Appeals for Veterans Claims issues each year on BVA decisionmaking. They review and make decisions on between 1,000 and 2,800 BVA decisions a year. And over the last 12 years as the Chairman indicated, the over 77 percent of the decisions the Courts reviewed, it has set aside the Board decision and sent it back the large majority of those the Court found at least one error that was prejudicial to the claimant in processing the claim. That is a terrible record. That would be an "F" grade if one were grading from "A" to "F."

Now to anticipate what Chairman Terry might say about the 77 percent figure. The cases that the Court judges are not randomly selected. They are self selected by the veterans who appeal. But it is clear to me and I think it is to the other Members of this panel that it is not only Board decision—it is not the Board decisions that are in error or that are the only ones that are appealed. A lot of veterans with erroneous decisions don't bother to appeal. They give up. They have been pursuing their claim for years.

And so while the 77.7 percent figure is not a random sample, it is definitely evidence of something that is majorly wrong with the decisionmaking process. In reviewing the thousands of decisions we have reviewed and Court decisions analyzing them, there are three significant factors that we believe exist. One is the Board keeps making the same types of errors over and over again. The failure to comply with the duty to assist. The failure to evaluate fairly, the lay evidence in the record. The failure to explain why positive medical evidence is rejected by the Board.

Second, it is my understanding that Board management does not downgrade the Veterans Law Judges (VLJs) for this—for making these types of errors. And so, by not downgrading their performance, it actually encourages them to continue in this vein.

And third, the Board campaign over the last few years to eliminate what they call unnecessary remands has actually contributed to the Board's poor performance by encouraging the Board to make a final decision on a case that should be remanded. And what happens in that situation is the claimant often appeals to the Court and the Court overturns it a year or two later sending it back to the Board to do what the Board should have done 2 or 3 years earlier.

The solutions that we advocate are twofold. One, the Congress should require a different selection process for judges at the BVA. There is a system that most Federal agencies use. It is the administrative law judge system for selection. And it is the only system, merit based system of judges in the United States. And it allows selection of people who may not come from within the agency and, therefore, may not have developed the habits that clearly the Veterans Law Judges have accumulated over the years.

And so I commend to the Committee looking at the administrative law judge (ALJ) system as a method to reform the Board and its decisionmaking process. I don't mean to suggest that there are not talented judges on the Board of Veterans' Appeals, there are. But it is helpful to get a blend of experience as we found out at the Veterans Court when you select judges for that Court to increase the quality of decisionmaking.

And at least, if Congress doesn't do that, they should require that the evaluative criteria used by the Board management to judge, the Veterans Law Judges be made public so one can see whether they are downgrading the types of errors that the Court is overturning, because you are not going to see an improvement unless there are some consequences or better instruction to the Board Members.

Thank you.

[The prepared statement of Mr. Stichman appears on p. 38.]

Mr. HALL. Thank you, Mr. Stichman. Mr. Cohen, you are now recognized for 5 minutes.

STATEMENT OF RICHARD PAUL COHEN

Mr. COHEN. Thank you, Chairman Hall and Members of the Subcommittee. I will agree with the observations that Mr. Stichman has made and add some of my own in addition.

I believe that the VA needs to make faster decisions and better decisions. Part of the problem with the decisionmaking at the re-

gional office and at the Board of Veterans' Appeals is the condition of the file. I brought a little show and tell today. This big pile over here is what I would call a small claims file. If you looked at it you would see that there are no page numbers. There is no index. There is no way for a decision review officer at the regional office nor for a Veterans Law Judge at the BVA to be able to select out a piece of important evidence in here unless the representative happens to carry some Post-it notes in his or her pocket and gets hold of the file and then puts Post-it notes in it.

The file that I am holding in my hand is the file that I presented to the Veterans Law Judge in Washington, DC, in this case. These are the only significant papers out of that file, but still because my client selected a video hearing and we were in St. Petersburg, there was no way for me to show the judge where these documents were contained in this file.

If you follow what I am saying the bottom line here is that the VA must go paperless and must have the documents indexed so we can tell the people who are doing the decisionmaking where the important documents are. The reason why this is so important is as the Committee has recognized, the sheer number of cases that the VA is dealing with. In the BVA, we have four teams around the country. Each team has 14 Veterans Law Judges supported by 60 attorneys who are writing the decisions. These four teams cover the entire country and some teams cover as many as 16 States.

I know there was an opinion that just throwing more money at the problem will not solve the problem. Well, I am here to tell you that it is impossible for the VA regional offices the way they are staffed presently and impossible for the BVA the way it is staffed presently to return prompt and accurate decisions. They just can't do it. They are trying to keep up every way they can, but there is a flood of cases coming in. We know that about 5 percent of all the claims that are filed in the regional office will end up at the Board of Veterans' Appeals. We also know that the servicemembers in Iraq and Afghanistan have sustained injuries to the extent that more than 10,000 are already injured and will be filing claims. So we can expect that there are going to be a lot of claims coming down the line.

And because of that fair share system that the BVA has put into place to try to move cases along, the attorneys are expected to write three to five decisions a week. Veterans Law Judges are expected to sign 15 to 20 cases a week. That is impossible. And they won't be able to keep up with it.

The Chairman has already said in his 2006 report that it is going to be unrealistic to assume that they are going to be able to keep up.

In addition, I would call your attention to the fact that not only does the Court remand a lot of the cases that come out of the Board, but on the actual decisions on the merit, on the merits, the Court only affirms 20 percent of the cases, which means 80 percent of the cases are wrong. And I attribute that to the number of cases that the Board has to deal with. Part of the speed problem, the difficulty of resolving the cases are what we call unnecessary remands where the Board will remand it when the evidence is sufficient to make a decision just to develop the case in order to deny or remand

to get additional information that is not really necessary. The reason why that is done is there is a production quota. And a remand counts as much as an actual decision. So there is a motivation to remand cases unnecessarily.

We could move cases a little faster if the Board would change its policy to encourage conversations between the judges, their staff, and the representatives of the veteran. Might be able to resolve cases without an actual decision. The Appeals Management Center is just not helpful to veterans in the opinion of NOVA. All cases end up going there where they languish for a while and then get bounced out to the regional office. We would rather see our cases go back to the regional office for development if it is necessary.

Thank you.

[The prepared statement of Richard Paul Cohen appears on p. 41.]

Mr. HALL. Thank you, Mr. Cohen. And I was saying to Mr. Lamborn that when we have the hearing in October on his bill, his information technology bill, that perhaps you could come back with that stack of paper as a witness.

Moving along, Mr. Blake, you are now recognized for 5 minutes.

STATEMENT OF CARL BLAKE

Mr. BLAKE. Mr. Chairman, Members of the Subcommittee, on behalf of PVA I would like to thank you for the opportunity to testify today on the Board of Veterans' Appeals and the Appeals Management Center.

PVA appeals representatives play an important role in the appeals process at both the BVA and the AMC. Our representatives prefer to resolve claims without the need for an appeal by educating our members on the benefits provided to them by law, by obtaining those benefits for those veterans, by avoiding frivolous claims and appeals and by aiding the VA in identifying issues and assembling evidence.

Our goal ultimately is to resolve differences with the VA at the lowest possible level through cooperation with VA's decisionmakers. As Congress attempts to address concerns related to the claims backlog specifically as it relates to what occurs in the appeals process, it is important to understand factors contributing to the current situation at BVA.

The BVA anticipates that by the end of Fiscal Year 2007, the Board will enter approximately 45,000 decisions. Currently, the average docket date for decisions entered by the Board is June 2005. Meanwhile, approximately one-third of appeals are currently remanded. According to the VA's own studies, a significant number of BVA remands were required because the agency of original jurisdiction, usually the regional office, failed to fully and or properly develop or decide the claim in accordance with existing instructions and directives of the department. This factor alone should be examined and addressed sooner rather than later as we believe that no meaningful reduction in the claims backlog can be achieved without paying attention to this problem first.

Realizing that the regional offices were doing a poor job on remands, the BVA began doing its own claims development without regulations permitting it. The VA then changed the regulations to

allow the practice. The regulations were subsequently found not valid in the court case, DAV versus The Secretary of Veterans' Affairs. In response to this decision, the VA created the Appeals Management Center to handle the remands in Washington, DC, where they could do the same evidence development but not compete with new claims and hopefully resolve these claims faster and better.

The AMC was then staffed and resourced to handle the historical average number of BVA remands which was about 12,000 per year. As a result of the unanticipated significant increase in the number of remands well in excess of the 12,000 per year estimate, the AMC was quickly overwhelmed which then led it to form three satellite offices located at St. Petersburg, Florida, Cleveland, Ohio, and Huntington, West Virginia. With all of these considerations that we have outlined in our written statement, we would like to make a few recommendations and attempt to explain their potential impacts.

We believe that first VBA must accelerate the progress toward an electronic claims records system. As long as VA continues to use a paper file shipped around the country, the claims and appeals process will be done in an expensive and antiquated manner. As demonstrated by the VHA's outstanding electronic medical record, similar gains and access to records can be realized in the claims and appeals process.

PVA also believes that centralized training better prepares rating specialists at all levels. Training of rating specialists was historically conducted at the local level by a more senior staff member. The VA now provides this centralized training at its Veterans Benefits Academy located in Baltimore, Maryland, and via the VA Intranet.

Furthermore, as we have called for in the "Independent Budget" (IB), Congress should fully fund any VA training initiatives in the VBA side. Improved and continued centralized training should help reduce inconsistencies and disparities between regional offices and should improve consumer confidence. Another point that the "Independent Budget" has advocated for is significant increases in staffing levels in the VBA at all levels. If the Fiscal Year 2008 Military Construction of Veterans' Affairs Appropriations Bill is enacted prior to the start of the new Fiscal Year on October 1, a prospect that seems to be getting dimmer by the day.

The VA will be provided much needed funding to add more than 1,000 new full-time equivalent employees to VBA. However, it is important to realize that decisions made on appeal require much greater expertise and often involve more complex questions of medicine and law. As such, it takes years to train a competent rating specialist. Trainees should simply not be conducting appellate review due to the complexity of these decisions. Increasing staffing today should be seen as an investment in the future.

Mr. Chairman, Subcommittee Members, again, I would like to thank you for the opportunity to testify and I would be happy to answer any questions that you might have.

[The prepared statement of Mr. Blake appears on p. 45.]

Mr. HALL. Thank you, Mr. Blake. Mr. Smithson, you are now recognized.

STATEMENT OF STEVE SMITHSON

Mr. SMITHSON. Good afternoon, Mr. Chairman and Members of the Subcommittee. The American Legion appreciates the opportunity to appear before you this afternoon to share our views on the Board of Veterans' Appeals Adjudication Process and the Appeals Management Center.

There are more than 31,000 appeals currently pending at the Board of Veterans' Appeals. Since 2004, the BVA has concentrated much of its efforts on eliminating avoidable remands in order to issue more final decisions to reduce its backlog. This effort has resulted in a significant reduction in remands, but has also resulted in a significant increase in denials with only a slight increase in allowances.

It is the opinion of the American Legion, based on our review of American Legion represented appeals denied by the BVA that in its zeal to avoid remands, the BVA has rendered erroneous or premature decisions in cases where benefits should have been granted or the case should have been remanded. In the past 8 years, the National Veterans Legal Services Program consultant to the American Legion has appealed approximately 500 American Legion BVA denials to the U.S. Court of Appeals for Veterans Claims and has won a remand or reversal in over 90 percent of these appeals.

Further, according to the CAVC Web site, the combined remand plus reversal rate for appeals decided by the Court on the merits was just over 76 percent. Such a reversal rate—such a remand and a reversal rate is unacceptable for any adjudicative system, but an extraordinarily high rate is especially galling for an adjudicative system that is required by statute to be so veteran friendly that the benefit of the doubt is given to the claimant. Clearly, such a high remand and reversal rate is a direct reflection of substandard BVA decisions.

The BVA, however, cannot be reviewed in a vacuum. The Board's work product is a direct reflection of the adjudications produced by the VA regional offices. Most of the problems with the BVA can only be corrected if the quality of adjudications in the VA regional offices is improved. The poor quality of VA regional office adjudications adversely impacts the work of the BVA. The American Legion has long maintained that such poor quality regional office work is a direct result of VA management placing a higher value on the quantity of adjudications produced by the VA regional officers rather than the quality of the work.

This emphasis on production continues to be a driving force in the VA regional office, often taking priority over such things as training and quality assurance. Performance standards of adjudicators and rating specialists are focused on productivity as measured by work credits known as "End Products." In short, the "End Product" work measurement system as managed by VA does not encourage regional office managers to ensure that adjudicators do the right thing for veterans the first time.

The emphasis on production causes two bad results. First, because of shoddy regional office work, there are so many cases for the BVA to remand that the Board pressured to reduce its remand rate all too often denies claims that should be remanded. This is reflected by the very high remand reversal rate at the CAVC. Sec-

ond, in many instances, the Board has no choice but to remand prematurely adjudicated claims. The high BVA remand rate has resulted in a growing backlog at the AMC. The BVA combined remand rate and reversal rate of 56 percent for Fiscal Year 2007 through August is arguably a direct reflection of the greater emphasis placed on the production over training and quality assurance by the VA regional offices.

In the view of the American Legion, the need for a substantial change in VBA's work measurement system is long overdue. A more accurate work measurement system would help to ensure better service to veterans. Ultimately, this will require the establishment of a work measurement system that does not allow work credit to be taken until the decision and the claim becomes final. Meaning that no further action is permitted by statute whether because the claimant has failed to initiate a timely appeal or because the BVA rendered a final decision.

We are pleased that recently introduced legislation, H.R. 3047 would mandate such overdue changes to VA's work-credit system. We are hopeful that if enacted, this legislation which would change the underlying incentive by rewarding quality of work rather than quantity, will increase the number of accurate decisions as well as claimant satisfaction, and in doing so reduce the overall number of appeals.

Moving to the Appeals Management Center. While the AMC is an admirable attempt by VBA to improve service to veterans, it does nothing to address the problems underlying the continued rise in the number of appeals and remands by the VBA. In our view, the very necessity of the AMCs existence begs the question, "Why hasn't VBA mandated the regional offices to correct their own mistakes?"

Moreover, the AMCs apparent inability to bring its extremely large backlog under control since its creation in 2003 has been a major concern of the American Legion. The AMC currently has more than 18,000 remands pending development and adjudication. In August of this year, the BVA remanded 1,710 cases to the AMC while the AMC only returned 639 remands to the BVA, leaving the AMC with a deficit of 1,071 cases for the month.

Moreover, 21 percent of the 13,082 appeals remanded by the BVA in the first 11 months of Fiscal Year 2007 were prior remands, as were 30 percent of the appeals allowed by the BVA. This data tends to reflect a large percentage, 51 percent, of cases that were not properly developed or adjudicated by the AMC.

Additionally, in July of this year the AMC started brokering ready-to-rate cases to designated regional offices with additional brokering expected to take place each month. Unfortunately, this is another example of the AMC as it is currently structured not being able to properly handle its workload. It is clear that the AMC is underfunded. The Congress and the VA should now take prompt action to either eliminate the AMC or to properly fund its work.

In conclusion, the best way to help veterans is to fix the entire VA Claims Adjudication System. Piecemeal solutions do not work and should be avoided. The VA work measurement system should be changed so that the VA regional offices are rewarded for good work and suffer a penalty with consistent—when consistent bad de-

cisions are made. Managers, attorneys and Veterans Law Judges at the BVA should be awarded for prompt careful work and they should also be penalized when they make bad decisions.

The AMC should be adequately funded or closed. American veterans seeking VA disability benefits deserve better treatment than what they are currently getting from VA.

This concludes my statement, Mr. Chairman. I would be happy to answer any questions you or Members of the Subcommittee may have.

[The prepared statement of Mr. Smithson on p. 48.]

Mr. HALL. Thank you, Mr. Smithson. I am sure we will have some questions. Now we are going to move to Mr. Atizado for 5 minutes.

STATEMENT OF ADRIAN ATIZADO

Mr. ATIZADO. Yes, sir. Thank you. Mr. Chairman, Ranking Member Lamborn, Members of the Subcommittee, on behalf of the 1.3 million members of the Disabled American Veterans, I do thank you for the opportunity to testify at this important hearing on the Board of Veterans' Appeals and the Adjudication Process as well as the Appeals Management Center.

And the best evidence for the importance of a fair and effective appeals process for veterans is a large number of VA decisions that are overturned on appeal. Experience has shown that nearly half of these appeals will be resolved by the regional office that made the decision being appealed without the necessity for review by the BVA. Of the 39,076 cases in which there was a BVA decision last year, 19.3 percent were allowed. Another 32 percent involve some processing omission that render the claims decision unsustainable, thereby requiring remand from the Board to the agency of original jurisdiction.

Together the allowed and remand cases comprise 51.2 percent of the Board's total decisions last year. This demonstrates not only the necessity of the appeals process, but also that VA's appeals process is fulfilling its purpose to ensure veterans receive the benefits they are due. In any adjudication system, mistakes are inevitable. An adjudication system as massive as VA's that claims wrongly decided will be relatively numerous under the best of circumstances. However, the unusually large percentage of appeals in which errors are found demonstrates serious problems in the initial decisionmaking process.

In addition, repeated errors at the field office level results in multiple remands and multiple Board decisions in far too many cases. Erroneous or defective decisions result in several adverse consequences. Erroneous denials deprive large numbers of veterans the benefits they are rightly due and delay the delivery of these benefits for protracted periods. Because erroneous denials necessitates multiple decisions, they add substantially to the workload at all levels of adjudication. Greater workloads require greater resources.

If the increased workloads are not matched by increased resources, quality must yield to quantity as my colleagues have mentioned. Leading to even higher error rates and a vicious cycle of increasing inefficiency these result in claims backlogs that delay the

delivery of benefits for all claimants. In other words, everyone suffers. And though there is room for improvement at BVA and the AMC, their problems are secondary to the more critical problems in the initial decision making process, again a recurring theme on this panel.

To give you an example, VBA management has tolerated for years problems such as that at the New York City Regional Office where on average an appeal languishes for over 4 years before the regional office transfers it to the Board for a decision. Or the fact that about 50 percent of all remanded cases last year come from only 20 percent of VA stations responsible for original decisions. Many of these appellants are elderly or many of them are very seriously disabled and they need these benefits in a more timely fashion than that.

With recent increases in the appellate caseloads and no corresponding increase in staffing, timeliness at BVA and the AMC is likely to suffer even more. Congress needs to address BVA's space and staffing more seriously. The Board's current location continues to be pressed for space due to the large volume of appeals. And if the request for additional employees to the Board is provided, space will become critical as representative organizations must likewise increase their staff.

The DAV appreciates the Subcommittee's interest in these issues and would be glad to work with you and your staff to improve the timeliness and accuracy of claims for veterans benefits and services.

This concludes by statement, Mr. Chairman. I would be happy to answer any questions you or other Members may have.

[The prepared statement of Mr. Atizado appears on p. 51.]

Mr. HALL. Thank you, Mr. Atizado. Mr. Hilleman, now you are recognized for 5 minutes.

STATEMENT OF ERIC A. HILLEMAN

Mr. HILLEMAN. Thank you, Chairman Hall and Members of the Subcommittee. On behalf of the 2.4 million members of the Veterans of Foreign Wars and our auxiliaries, it is my pleasure to testify before you today on the Board of Veterans' Appeals Adjudication Process and the Appeals Management Center.

Let me begin by stating that the VFW is committed to an effective and efficient claims process with a just and accessible appeals process. We hope to be a partner in seeking actionable solutions to the challenges that face the VA. All veteran service organizations have a similar goal, to ensure America meets her stand and responsibility to the American veteran for the sacrifices endured in her service.

The VFW believes this agreement does not cease when the uniform lies folded in a drawer. We must view the Department of Veterans Affairs Claims Process through the lens of this social contract. The VFW has long served at no cost to our fellow veterans to provide benefits counseling, claims development, outreach, claims review at regional offices, the BVA and the AMC.

The VFW adds value to the claims adjudication process as a quality assurance tool and a veterans provider of representation. The backlog of veterans' claims within the VBA or excuse me—the

VBA is on the rise. The nearly 640,000 ratings and authorization cases are pending. This is 7.4 percent higher than last year and 22½ percent higher than 2005. The challenges that VBA faces in addressing the mounting workload are well established. These include the growth of total claims, every increasing complexity, and the expectations for an accurate and timely decision.

The contributing factors of the backlog are also well known. As the backlog of VBA claims swells at every step of the process, the VA weighs the values of quality versus quantity. The VA has repeatedly testified before the Congress to the ills that plague its claim system. Congress has responded with a much needed increase in funding, yet additional personnel following decades of inadequate funding and staffing will not be productive in the near term.

VA has sought to address these problems by creating the Appeals Management Center here in Washington. The driving idea behind the AMC was specialization, thus making the AMC a catch basin at the end of the process to improve its overall quality. It has yet to realize its original vision despite the committed and dedicated staff, yet the absence of training and high turnover will never allow it to live up to its potential.

VBA employees face a long and complex training regimen and are not easily replaced. We believe the AMC would be well served by moving its operations to a small or moderate size city with minimal cost of living and a large university. The greatest strain on the AMC is constant turnover of employees. In a smaller community with a thriving university population, the AMC would be a premier employer offering job security, high wages, and room for advancement. Currently the AMC is more like a regional office in a headquarters town. Imagine, if you will, an office that is losing the top 10 percent of its skilled workforce yearly to higher paying offices. This is the dynamic between the AMC and the VA Central Office.

Such a move in the VA is not without precedent. In 2001, the technical accuracy review STAR Program relocated from Washington, DC, to Nashville, Tennessee. This move allowed the VA to attract greater quality and more qualified employees. It reduced the cost of living for its employees and in cutting down on commute times, allowed employees to arrive at the office more refreshed and ready to work.

Reform of the system is necessary through a strong VBA leadership, congressional support, and VSO involvement policy reform that keeps the best interest of the veteran at heart are truly possible.

Thank you for the opportunity to present our views today before this Subcommittee and I welcome your questions.

[The prepared statement of Mr. Hilleman appears on p. 55.]

Mr. HALL. Thank you, Mr. Hilleman. As you know from the buzzers going off, we have had votes called on the House Floor. So if you would be so kind as to wait and have some more of our delicious ice water. We will—I think these are going to be quick votes.

Okay. I have another suggestion—okay. We are going to stay with plan "A." We are going to recess the hearing while we go cast these three votes and ask you please to stay with us and we will be back as soon as we can.

[Recess.]

Mr. HALL. Thank you for your patience. The hearing is called back to order. I will try to get through my questions as quickly as possible and then depending on who comes back and when they come back we will have more questions.

I wanted to ask Mr. Stichman about the concept that you discussed of a merit-based system to pick judges similar to the ALJ system. Can you give us some more specifics about that? You know how that might work or in how that differs from the current method of choosing the adjudicators for the BVA or the CAVC?

Mr. STICHMAN. Certainly. That is an established system of picking Administrative Law Judges that work at various different agencies. My testimony talks about the methodology which involves taking a test, written and oral, interview, etcetera. And it results in a high quality of judiciary among the Federal agencies. And a major advantage is people from all different walks of life compete. And to contrast that with the system we have now, most of the Veterans Law Judges come from within the VA system and they develop habits that aren't always healthy. Witness the track record at the veterans court. And so there are plenty of people knowledgeable in veterans law that don't work for the VA but they don't become Veterans Law Judges but they would potentially become judges if we had a system that was open to everyone to apply.

I was talking to one of my colleagues about an attorney named Steve Purcell who used to work at the Disabled American Veterans for many years. An excellent advocate. And finally he went through the test process to become an Administrative Law Judge and he is a judge in the Social Security Administration now. But he was—because of the system, he couldn't really be a judge at the Board of Veterans' Appeals because of their tendency to hire people from within. So I think that is a basic overview of the difference between the systems.

Mr. HALL. Thank you. There will be a follow up by minority counsel on that question, but first let me just ask Mr. Cohen, you are suggesting, if I understand you, that we should change the regulation so that a remand does not count as a decision. So that to meet quotas, one has to actually make a decision of yes or no as to the validity of the particular claim?

Mr. COHEN. Yes, Chairman Hall.

Mr. HALL. Boy, that makes too much sense. And I think I hear, pretty much across the board, the feeling that there is more staffing needed both at the regional offices and at the BVA, because the numbers are overwhelming and probably only going to get more so. Does anybody dissent from that viewpoint? Just checking. I just, you know, I thought I heard somebody in the executive branch say that we are spending too much money on veterans in the last week or two. But I didn't, you know, I think money does, speaking as a former school board president, money doesn't take care of all problems, but there are some problems you need money to take care of.

Mr. Blake, you talked about full funding for training. How short are we now on that in your view?

Mr. BLAKE. I don't know that I could necessarily give a dollar figure on that. One of the things we actually struggled with, with the Independent Budget, is figuring out how to really quantify a cost

for training, something we are actually trying to refine to improve the Independent Budget. I know last year there was some recommended dollars as it relates to electronics or electronic initiative within VBA that we have also pushed for funding. I think the priority for us in the current year was to get the funding for the additional VBA staff.

Kind of to your point about adequate staffing, I would only draw your attention to the point that we made, although we called for more than 1,000 recommended VBA increase in staffing in the IB, the appropriations bills would provide for that if they ever get passed. But we have also stated that that doesn't mean that those new trainees should go directly into BVA or that level of claims works because it is too complex to have a trainee stuck in there and the concern that was addressed from when I had this discussion with some of our appeals representatives was that if you are going to at that level of complexity in the claims process you need to have people who have moved up in the system and understand at least how that system works.

But it is to your point again about the training. You know, I could probably try to put together something to better quantify that but just off the top of my head I don't know that I could provide a number.

Mr. HALL. Thank you. Mr. Smithson, would you elaborate briefly on your statement that a more accurate way to measure work accomplished should be developed?

Mr. SMITHSON. Well, right now with the end product work measure system, the adjudicators, the rating specialist they get credit each time they rate a case. So in the current system if I file a claim, they rate the claim, they deny the claim, I submit additional evidence or I file a notice of disagreement or I question it and they come back and they rate it again, they get another credit. They keep getting credit for that same claim.

So in one case, for example, where they erroneously deny it or prematurely deny it and they have to rate it 2 or 3 times they get credit each time whereas if they would have rated it correctly the first time they would have gotten one end product credit. So the system itself, as it is set up now, there is really an incentive not to do it right the first time because they continue to get credit each time they rate that claim. And that is why we make a recommendation and we support the recent legislation that has been introduced that would change the work measurement system to only provide the credit when the claim is final; either that the veteran does not appeal it within a year or the Board of Veterans' Appeals makes a final decision.

Mr. HALL. Thank you. Mr. Hilleman, I am struck by the figures that you had in your written testimony and your oral testimony also about the backlog being 7.4 percent higher than 2006 and 22½ percent higher than 2005. It is obvious, with the returning OEF/OIF vets and Vietnam veterans hitting that age when things start to develop that may have been lying in wait, that the challenge is only going to increase.

You made a statement about how the AMC could be the premier employer or a premier employer in a smaller university town making it more effective. How do you see that happening?

Mr. HILLEMAN. Thank you for the question, Mr. Chairman. The VFW has an idea that the AMC, if it were moved to a smaller town with a university where you had a high influx of talented young people seeking an education, you would have a ready pool of young applicants.

I can speak from my personal experience having gone to a university in a small town in Northern Utah. The student body there was about 18,000 students. Some of the premier employers in that community of about 100,000 people were Best Buy and a cheese factory. So an organization, such as the VA doing substantive work, offering career advancement and working from a government pay scale would be a very, very competitive employer.

Mr. HALL. That is a good answer.

Mr. HILLEMAN. Okay.

Mr. HALL. Thank you. And it is complete. Until Members and Minority counsel return here we will just continue until all questions have been asked.

Mr. Atizado, the erroneous initial decisions that you spoke about causing more and more work down the line, obviously training, better training at the local office level and more staff at the local office level would seem to help that. Is there a particular flaw or pattern that you have observed that you think contributes to those erroneous decisions?

I mean, we have seen in my district a few cases with individual veterans who have come to our staff and to our office for help, but I just thought you are seeing a bigger picture than we are. So is there a particular area or two that you would pinpoint?

Mr. ATIZADO. Not really, Mr. Chairman. The whole idea of getting it right the first time really is varied throughout the Nation—I was actually trying to recall as that issue came up where certain States were—veterans in certain States were not receiving equal or were receiving less than the average compensation than their counterparts in other States. I was trying to remember specifically how that issue was dealt with. But I think when I had inserted that in my testimony it really does come down to doing it right the first time. Erroneous decisions are exactly what we are here talking about.

And if——

Mr. HALL. Thank you. I wasn't talking about geographical areas where, but areas of medicine or areas of psychiatry or you know a particular kinds of injury or disease or so——

Mr. ATIZADO. Conditions.

Mr. HALL. Right.

Mr. ATIZADO. Not that we are aware of, Mr. Chairman.

Mr. HALL. Okay. Thank you very much. That is it for my time. Minority counsel may have a question to ask on Mr. Lamborn's behalf. Okay. We will wait for Mr. Lamborn. There he is now.

And meanwhile we will ask Mr. Hare if he has questions.

Mr. HARE. Thank you, Mr. Chairman. Thanks for holding this very important hearing today. And I just have two questions for the entire panel and you might have touched on this but I think it bears repeating.

The two questions I have are what do you believe are the most critical interagency steps that the BVA and the AMC could take to

decrease the time it takes to process an appeal, would be my first question.

And the second one would be, would changing the "number of cases per year" provision in the evaluation of these BVA judges and attorneys allow for more focus on fully developing the claims?

I know these are two very long questions and I apologize, but I am interested to get your perspective on this, because I just have to tell you by the way, you know, a backlog of 31,000 and that stack that you showed to us, you know, these are people. I mean this paperwork is paperwork, but what we are talking about are people that really need these benefits, desperately need them and going through this process.

I was amazed and I am glad you brought them. It was a very eye-opening experience for me. And I don't know for the life of me how when you are doing the video, the teleconference, I mean I don't even understand why they are not numbering the pages. I don't how you can possibly process an appeal like that unless you are a Kreskin or a mind reader.

Mr. COHEN. Well, I think you have hit it on the head. The initial problem that goes throughout the system is the paper file that has to be transmitted from one place to another place and has no index and no pagination. This is probably the only agency that would dare to try to render decision without a pagination and indexed record. It makes it exceedingly difficult on all decisionmakers from the regional office to the BVA. And the moving of that record takes time. Whereas if it was an electronic record we wouldn't have that problem with time.

The other problem that we have in terms of decisionmaking and consuming a lot of time is if we have needless remands, unnecessary remands where the case can be decided favorably in favor of the veteran based on the presumptions that apply in a veterans favor, yet the case is sent out for another exam in hopes that the VA might have another doctor who might disagree with the veterans' doctor or with the favorable evidence. That consumes a lot of time and ends up with the wrong decision ultimately that goes up to the Court and comes back down again.

Mr. HARE. I just want to say before the panel answers, I think it will be a wonderful day when we err on the side of the veteran and not the Administration.

Mr. STICHMAN. I agree with what Mr. Cohen said about the need for electronic claims file. That would be a great help.

With regard to your question about the focus at the Board on productivity getting cases out, I think that it is too much of a focus and not enough focus on the quality of decisionmaking. I would rather see a decision come out slightly later and be correct than a decision that needs to be appealed to the Veterans' Court and be incorrect. And I think there is a general problem on that score.

Mr. BLAKE. Sir, I would just kind of re-emphasize one point that I don't think can be overstated and that is that I think on some level the workload at the BVA could be reduced simply by ensuring that the work coming from the RO is correct the first time.

When I discussed this with our appeals representatives, their concern was that a significant percentage of cases that come to the Board level should have never even gotten there because the RO

simply wasn't following instructions that the VA has in black and white or directives that the VA has put out. And if they would just follow their own instructions and rules that they are required to follow, a lot of these cases would never even reached that level and would have been decided properly from the get go.

So I think that is why I think we have all kind of emphasized the point that, I mean you don't necessarily fix the whole problem, but you can at least address a significant percentage of the problem right away by holding the lowest level their feet to the fire.

We participated in a task force with a couple of the VSO's last year for the Ranking Member of the Full Committee, Mr. Buyer, addressing our concerns about true performance measures and performance standards as it relates to VBA and particularly at the RO level. So I think that is where you have to start and go from there.

Mr. COHEN. I will just add one other thing. And that is the duty to notify the veteran of evidence that needs to be submitted in the claim has been looked at by the VA as a procedural hardship and not as something that really benefits the veteran. As somebody who has represented veterans since 1992, I can't count the number of times that I started representing a World War II era veteran or a Korean War veteran who had a claim pending all those years and when I look at the file I explain to the veteran what is necessary to win this case. What additional pieces of evidence the veteran could submit and win this case. And the veteran said, "No one ever told that to me."

And I put the thing together and I win the case. The duty to notify is not a mere procedural benefit that a veteran has. It is the essence of the case. If a veteran is told from the beginning, "If you just submit this piece of evidence, you will win the—we could grant the case." And they do, the case is over. We don't have to go up and down the ladder. That is a very important benefit that veterans are entitled to, but it is, still is, interpreted by the VA and by the Court as a mere procedural safeguard where the VA really doesn't have to evaluate the evidence that is in and instruct the veteran. Submit this piece of evidence and we will grant the case.

Mr. HARE. Thank you, Mr. Chairman.

Mr. HALL. Thank you, Mr. Hare. The Chair will now recognize Ranking Member Lamborn.

Mr. LAMBORN. Thank you, Mr. Chairman. Mr. Stichman, I have a two part question about the Veterans Law Judges. And what would we do if we replaced them with Administrative Law Judges? What would we do with the current VLJ's number one, and number two how long would it take to train people from outside the system to become proficient so that they are able to render accurate decisions?

Mr. STICHMAN. Well, as to the first part, the Veterans Law Judges I am sure during the process should stay on until you have people approved as ALJ's. It will have to be a staggering system. But they should be able to apply through the normal administrative law judge process of application, examination, and selection. So they might end up being selected, but they would be competing with other people from outside the agency.

With regard to the experience of the people who were selected, I would think that having a background in veterans law would be

an advantage in the selection process. And there are many people outside the agency that do have veterans law experience. And while you were out during the voting, I was telling the Chairman about in answer to his question of one of the DAV representatives, Steve Purcell who worked as a representative both at the court level and at the agency level for a number of years and then he went through the process and is now a Social Security Administration administrative law judge. But with the system at present he didn't have the opportunity to be a Veterans Law Judge. And he would have the opportunity if we had an open system as used by other agencies.

So I guess that that is a partial answer to the second part. And it is true that if select people are selected who don't have veterans law experience there will be a start up time and that has a certain disadvantage to it. But in the long run I think it is an advantage that type of person is going through that competition is going to make better quality decisions in the long run. And so in the long run, I think, we are benefited by that system.

Mr. LAMBORN. Okay. Thank you. I have no further questions, Mr. Chairman.

Mr. HALL. Thank you, Mr. Lamborn. I just wanted to quickly ask before we let this panel go, Mr. Stichman, the VA has an obligation to assist claimants in developing evidence to substantiate claims. In your written testimony you stated that this obligation is frequently unfilled. At what stages of the process are claimants suffering most from the lack of help?

Mr. STICHMAN. Really at their regional office. I mean that is the major problem is you get quick decisionmaking. All the panelist have talked about it, about it not being accurate. And a major reason they are prematurely decided is the regional office didn't get all the evidence needed to make a fair decision.

And so they make that mistake and let's say deny the claim. It is appealed up to the Board and then the Board has the problem when they look at the case they really should send the case back to develop the evidence that the regional office should have developed. And because of the pressure to avoid what they call unnecessary remands too often the Board caves in and decides the case based on an inadequate record. Denies it, because the evidence is not in the record. So the claimant has to appeal to the Veterans' Court which overturns it, sends it back to the Board of Veterans' Appeals to send it back to the regional office to get the regional office to get the evidence they should have gotten 10 years earlier.

So the problem begins with the regional office.

Mr. HALL. Thank you, sir. Mr. Cohen, I was wondering if you could explain how you arrived at the 71 percent denial rate in your testimony for the BVA? And in your opinion, what is the real problem behind this prolonged wait?

Mr. COHEN. I took the numbers from the report of the Chairman for Fiscal Year 2006 and—okay. It is at page 19. What I did is I added together the number of cases that were remands, which were 12,487 with the other—the cases that were nominated—which were designated as "other" which were 945 which comes out to 13,432. I subtracted those from the total number of cases, which was 39,076 to leave me with 25,644 merit decisions. I then calculated

the percentage of denials over merit decisions, which comes out to 70.6 percent which I rounded off to 71.

And the second part of the question I didn't hear. I am sorry.

Mr. HALL. Oh, okay. Well let me just change the second part of the question. Thank you for that answer. Is there any reason why there is such a dramatic, that you can identify, why there is such a dramatic asymmetrical increase in denials as has been observed or why that increase would be warranted?

Mr. COHEN. Well I agree with Mr. Stichman that a number of the cases that are denied should actually have been developed and they are denied because they are inadequately developed. I also believe that there is an institutional bias throughout the VA where the veterans are not given the benefit of the doubt and the benefit of presumptions that exist in their favor. And as a result, end up with erroneous denials.

Mr. HALL. Thank you, sir. Mr. Stichman, I think one of your recommendations was to hire more BVA judges. From your assessment, how many more judges do you think would be necessary to start making headway on the backlog without sacrificing the quality of decisionmaking?

Mr. STICHMAN. Well I didn't suggest in my testimony more BVA judges. I suggested a different system for selection, but I don't oppose what many people have suggested that we fund the Board better so it can get its job done better. So I am in support of that.

Mr. HALL. Okay. Thank you. I think I just made a mistake. That was actually Mr. Cohen's testimony. Sir, I believe you did recommend more BVA judges. Was that correct?

Mr. COHEN. That is correct.

Mr. HALL. And do you have a number in mind?

Mr. COHEN. Well what I was looking at is if we were to compare the VA system with the Social Security system, we would see that in the Social Security system in each region and for example in the West Virginia region, there are three offices of judges that handle the cases. There is one in Charlestown, there is one Morgantown, and people in the northern panhandle also go up to Pittsburgh.

Each one of those regions has about five judges. And then sufficient staff to follow through with the decision writing. If you look at the VA system, what we are looking at is a four to one ratio of judges to staff, but the number of judges that handle all these cases is greatly reduced. I would suggest that for each region that we would need four to five judges.

It would—we would probably triple the number of judges and staff that we needed in order to adequately make decisions in a timely and accurate basis.

Mr. HALL. Thank you, Mr. Cohen. Mr. Blake, I wanted to ask you, you mentioned the high cost of shipping paper claim files from one site to another as an appeal works its way through the system. And I just wanted to ask you regarding Mr. Lamborn's legislation. I don't know if you have had a chance to look at it yet, but H.R. 3047 addresses this issue of electronic records. Could you comment on the impact this would have on the speed and efficiency of the claims processing system?

Mr. BLAKE. Well, first let me say we haven't actually taken a position on the legislation and we will be glad to do so with some de-

tail to our discussion. There are some good points, I think the legislation we have some concerns and we have actually talked to staff about it and we will be glad to address it in more detail with our testimony in the future.

I think in my testimony I make the point as an example of the VHA's electronic medical record and how that has streamlined basically the entire healthcare process. And how the same principles could be applied to the claims process and expedite a lot things. I mean Mr. Cohen held up a copy of an appeals file there and knowing that postal rates change significantly this year and how that has changed. There is a significant cost related to that. If you just figure that it doesn't cost anything to send some megabytes over the Internet or whatever system the VA wants to develop, you would save a lot of money there. And I think you there has been some legislation that addresses concerns about timeliness and things like that. And you significantly reduce a lot of wasted time that is done simply through shipping as well.

Mr. HALL. Thank you. Of course we will be having a hearing on that so we will look forward to hearing more from you on the details of that bill.

I wanted to ask Mr. Smithson, given the issues with workflow that you cited in your testimony, does the American Legion believe that veterans would be better served currently by increasing staffing at the AMC or by doing away with this entity entirely?

A number of you mentioned, you know, either fund it and staff it adequately or do away with it. And it sounds to me like it sort of hasn't yet hit a stride where it is doing what we expected or hoped that it would do so?

Mr. SMITHSON. Unfortunately, for the AMC and not all of it is the AMC's fault. When they opened their doors they were faced with an extreme backlog of cases that came from the defunct BVA development unit. So they have been under the gun ever since they opened their doors.

It is not only the type of work or the amount of work they have. If you look at the type of decisions that are coming out of the BVA or are coming out of the AMC for the first 11 months of this Fiscal Year, 21 percent of the cases that were remanded by the Board were previous remands, meaning they were already at the AMC once before. At least once before. Thirty percent of the cases allowed by the Board of Veterans' Appeals were previous remands that were again denied by the AMC and sent to the Board.

So I think we really need to look at the quality of work that is being done at the AMC. Why are they making these type of errors and address that. Obviously, more staffing to help with that would facilitate that, but ultimately I think we need to look at the quality. And if the VA is not willing to put the resources in place at the AMC, they need to think of other options.

Mr. HALL. Thank you. I would like to recognize Mr. Hare again for another question.

Mr. HARE. Thank you, Mr. Chairman. And I will try to brief here, because I have to leave for another meeting. But I think you might have touched upon this, but I am hoping that the VSO's here can help me out.

The BVA is reporting a 93 percent decision quality rating and many of the VSO's that have been here, many of the VSO's we have talked to, are reporting that about 75 percent of the cases brought before the CAVC are either remanded or reversed. And I am wondering if you could explain to me, maybe you already did, but I just want to make sure that I am clear on this. What is, you know, why is there such a large discrepancy here and what is causing that, in your opinion?

Mr. STICHMAN. Well I will take a crack at that. I think the question is better addressed to Chairman Terry. I don't know how they came up with the 93 percent accurate figure. My understanding is that the reason it is so high is they don't consider errors, some types of errors like duty to assist or reasons or basis errors made that the Court finds that the Board has made as rendering the decision inaccurate. I could be wrong about that. Chairman Terry, I think, is the best person to answer it.

But it makes very little sense that the Board of Veterans' Appeals decisions could be 93 percent accurate and to have such a high inaccuracy finding rate at the Veterans Court. Now the Veterans Court does review only a small percentage of the overall Board decisionmaking, that is true. But to believe that only the erroneous decisions that have errors are appealed to the Court is not consistent with the decisions I have reviewed and in talking to veterans who give up.

Mr. COHEN. And I would agree with that. The real test is the number of affirmations by the Court, that is only 20 percent. That does not indicate an accuracy rate in the 90 percent bracket.

Mr. HARE. I am sorry. What does that 20 percent mean? When you say that they are affirming——

Mr. COHEN. That only 20 percent of the decisions coming out of the Board are affirmed by the Court outright. The rest of the cases are either remanded because of errors committed, notice is not given, extra development needed, or are reversed. So only 20 percent of the time does the Court agree with what the Board has done. And understanding what Mr. Stichman has said, many of the veterans who get denials from the Board do not appeal. They just give up. Especially someone with post traumatic stress disorder who doesn't like the system anyway. When they get the denial they just throw it away, they get angry, and they won't do anything further.

Some of them may file new claims. And you have to understand that the claims that do go to the Court that are appealed to the Court are not just ones that are taken by attorneys. Most of the cases that go up to the Court initially are filed pro se by veterans. They are not filed by attorneys.

So we can't assume that the ones that go up are only the ones that have errors in them. We have to assume that there were errors in a lot of them and they just never went up to the Court.

Mr. HARE. Thank you. Thank you, Mr. Chairman.

Mr. HALL. Thank you, Mr. Hare. I would like to thank all of our Members of the first panel very much for your testimony. We will be taking it to heart and trying to incorporate into the best legislation we can develop. You are now excused. Thank you for your patience and your generosity with your testimony.

We will now call panel two. Joining us is Mr. Arnold Russo, the Director of Appeals Management Center of the U.S. Department of Veterans Affairs. And Mr. James P. Terry, the chairman of the board of Veterans' Appeals for the U.S. Department of Veterans Affairs.

Mr. LAMBORN. Mr. Chairman. I am going to excuse myself because I am torn, but I want to also go to the farewell reception for outgoing Secretary Nicholson. So I am going to excuse myself, but I am leaving some questions for the record. And I will be studying the written testimony that the two witnesses have provided in detail in lieu of hearing them verbally speak.

Mr. HALL. Mr. Lamborn, you are excused. Say "congratulations" and "good luck" to Mr. Nicholson for us.

Mr. LAMBORN. I will.

Mr. HALL. Mr. Russo, thank you for your patience, and Mr. Terry. Both. I guess we will start with Mr. Russo. We have your written statement so you are recognized for 5 minutes.

STATEMENTS OF ARNOLD RUSSO, DIRECTOR, APPEALS MANAGEMENT CENTER, VETERANS BENEFITS ADMINISTRATION, U.S. DEPARTMENT OF VETERANS AFFAIRS; AND HON. JAMES P. TERRY, CHAIRMAN, BOARD OF VETERANS' APPEALS, U.S. DEPARTMENT OF VETERANS AFFAIRS.

STATEMENT OF ARNOLD RUSSO

Mr. RUSSO. Good afternoon, Mr. Chairman, Ranking Member. I appreciate the opportunity to testify today.

The Veterans Benefits Administration and the Board of Veterans' Appeals have worked closely together to address the root causes of remands. Our joint initiatives have focused on increased coordination of data collection, identification of trends, and training. These joint initiatives have proven to be very successful.

The remand rate for Fiscal Year 2005 was 43 percent. The current remand rate has improved dramatically to 34 percent. We continue to work to identify the root causes of cases being remanded. There are many reasons why a case may be remanded by VBA for additional action that are beyond the control of the regional office that process the case, such as a regulatory change or a new precedent court decision.

While remands do not necessarily mean that a mistake was made in the processing of the case, we have focused our attention on analyzing those cases where development by the regional office was deficient and the remand could have been avoided. Deficiencies are identified nationally and by regional office and are targeted for development of additional guidance and or increased training.

Additionally, VBA this year added avoidable remand rate to the performance standards for all regional office directors. Through the end of August 2007, the Fiscal Year national avoidable remand rate is under 18 percent or a 6 percent improvement over last year. To improve the timeliness of remand processing at the Appeals Management Center, we have added a technical expert to every development team to ensure that all the information requested in the remand order was asked for and obtained or a satisfactory expla-

nation as to why the evidence could not be obtained is included in the claims folder.

This procedure provides an internal check on our development practices and ensures consistency throughout the AMC. The AMC has received assistance in remand processing from three of VBA's resource centers. This allowed the AMC to establish a workflow that develops cases in a timely, efficient, and accurate manner. During Fiscal Year 2003, regional offices were taking an average of 700 days to complete a remand. In Fiscal Year 2005, average processing time for a remand completed at the AMC was 400 days. Currently, the AMC is averaging 343 days to process a remand.

We continue to strive for further improvement. We have set a strategic goal of 230 days to complete remands. This goal represents the minimum time needed to complete a remand given the notification, evidence collection, and follow up requirements of the Veterans Claim Assistant Act and other legal requirements.

Steady improvement also continues as a result of the AMC's effective working relationships with many of the veteran service organizations. The VSO's work directly with our decisionmakers and help reduce administrative waiting time. When the VSO's are satisfied that a case is ready to be certified back to the BVA they complete the necessary forms and assist us in getting the case back to the BVA for a final determination.

The AMC's progress in improving the quality of remand processing is demonstrated by the reduction in the number of cases remanded a second time. Two years ago approximately 35 percent of the cases certified to BVA by the AMC were again remanded to the AMC. Today, approximately 85 percent of the cases certified to BVA by the AMC are accepted and finalized. The AMC remand inventory at the end of Fiscal Year 2006 was approximately 14,650. Currently the inventory is above 18,300. One of the reasons for the increased inventory is the increase in the number of remands received during the Fiscal Year. Last year, the AMC received 15,000 remands or an average of 1,250 per month. Even with the reduced remand rate, we are this year receiving an average of 1,417 remands per month.

In addition, because of VBA's increased disability claims workload, the three resource centers that had been assisting the AMC were redirected to supporting regional offices with high workload inventories. To address the remand workload, the AMC was authorized to increase its staffing level from 87 employees to 105. These new employees have gone through centralized training and are now receiving training at the AMC.

Many of our new hires will attain journey-level status toward the end of the Fiscal Year and will then be able to significantly contribute to remand production. The long-term impact of our hiring will be that the AMC will become self-sufficient and will continue to improve in both the timeliness and accuracy of remand processing.

[The prepared statement of Mr. Russo appears on p. 57.]

Mr. HALL. Thank you very much, sir. Mr. Russo, you spotted the red light and stopped shorter than you had to. But we will have a couple of questions for you in a moment. And thank you for your

testimony and for the improvement that you are making and describing to us, which was certainly good news.

Chairman Terry, your statement is in the record and you are now recognized for 5 minutes.

STATEMENT OF HON. JAMES P. TERRY

Mr. TERRY. Thank you very much, Mr. Chairman. It is a pleasure to be here. And I thank you for the opportunity to discuss with you the Board of Veterans' Appeals role in the process of benefits adjudication.

I would like to say a few words about the VA adjudication system, which has been described in such glowing terms by the prior panel. And I would like to do it by starting and looking at a few numbers. And I think we need to put this system in perspective. I believe the first panel did not do so.

This prior year, Fiscal Year 2006, the Veterans Benefits Administration, and they are not here to defend themselves so let me try, adjudicated approximately 815,000 claims. Eight hundred and fifteen thousand claims. Less than 5 percent of those were appealed. And certainly not 95 percent of the claimants in that system received what they asked for. Five percent appealed to the Board of Veterans' Appeals.

Of those who appealed to the Board of Veterans' Appeals, some 41,000, we adjudicated 39,076 claims. Of that number, 9 percent appealed to the Court of Appeals for Veterans Claims. Nine percent. And as you know, Mr. Chairman, this is the easiest system in the world to appeal. For example, for VBA the words, "I disagree" or "I appeal" on a Notice of Disagreement is all that is required and a mere two-line Form Nine is required as each of the gentleman who testified before well know.

There is no cost to appeal to the Board of Veterans' Appeals. There is a $50 charge to appeal to the Court of Appeals for Veterans Claims and it is always waived, at least I have not seen one time it has been denied if the individual indicates an inability to pay.

Of those cases that go to the Court of Appeals for Veterans Claims, 15 percent are appealed or a somewhat higher number than are appealed to our Board. I think it is important to know that despite the testimony in the prior panel, 40 percent in Fiscal Year 2006, of those cases that went to the Court of Appeals for Veterans Claims were either affirmed or were dismissed because our decisions were upheld for one reason or another.

I think we need to put in perspective what has been testified to and look at the real numbers. We are talking about 91 percent of the people who come to our Board being satisfied, not appealing to the Court of Appeals of Veterans Claims, 91 percent. Ninety-five percent being satisfied at the regional office level. And 85 percent at the Court of Appeals of Veterans Claims and not going forward to the Court of Appeals for the Federal Circuit.

I have had the opportunity in my 36-year legal career to serve both as a judge in the military system where I was a General Court-Martial Judge, and also a judge in the system at the U.S. Department of the Interior before I came over here. And in that prior life at Interior, I managed the Administrative Law Judge sys-

tem. I would just like to say a little bit about my observations of this system in which I am presently engaged, and a system that I saw at Interior as an example of one in which Administrative Law Judges sat.

We have a very complex body of law. And it requires a great deal of experience to administer that body of law as a judge. And I believe that it is important that we all recognize that someone coming just as a generalist would have a tremendous learning curve. We presently have a system where the individuals are screened by senior judges within our system. A recommendation is made to a panel. An evaluation is made by a panel of—a second panel to evaluate their talents in each of the core competencies. They are then interviewed by an interview panel with outside panelists from other organizations in every case. They are then recommended to me. I discuss it with the Secretary. The Secretary goes and talks to the President and the President gives his approval.

I beg to differ with the good judgment of the individuals who have testified before, and I know they have testified in good faith, but at the same time, I think our judges are comparable with any in the Federal system. When I was in the Marine Corps and serving as a General Court-Martial Judge, I thought we had some of the best judges I had ever seen. I can honestly tell you I think the judges we have on the Board of Veterans' Appeals are the finest I have ever seen.

[The prepared statement of Hon. Terry appears on p. 58.]

Mr. HALL. Thank you, Mr. Chairman. Since we have such a small contingent of the Committee here and we won't have questions from a great number of Members, I want to give you an opportunity if you would like to talk about the recommendations that you make in your written testimony.

Would you like to—you have 11 points of ways by which the Board could continue to improve. You have already spoken about some of them, but I would like to allow you to elaborate.

Mr. TERRY. I would be delighted——

Mr. HALL. Well you have waited so long.

Mr. TERRY. Well, certainly, I have put my written statement in and those cover those issues, but I would be glad to address anything the Chairman would feel most comfortable with.

We certainly are very proud of the fact that the Secretary has asked us to spearhead an initiative, which is called the Expedited Claims Adjudication Initiative. This has been briefed to the staffs of both the House and Senate Committees of jurisdiction and to VSO representatives as well. And this will offer certainly an expedited process to represented claimants who desire to shorten the time required to process their claims.

This is going to be formally established when the regulatory scheme is finally vetted through the *Federal Register*. And that process will be set up in four locations for a period of two years, and it would simply ensure that cases are not sitting on the shelf waiting for time to expire. And it would simply offer the veteran the opportunity to move forward when, in fact, all evidence on any given area has been presented.

Mr. HALL. Thank you, sir. May I ask Mr. Russo, you mentioned that the help VSOs have provided to reduce administrative waiting

time for claimants has been significant. Can you describe your relationship with the VSOs more deeply and outline what role they play in the appeals process at the AMC?

Mr. RUSSO. Sure. Mr. Chairman, I currently have three members from different service organizations sitting on the floor with the decisionmakers of the AMC. And when a decision comes out it is promulgated and given directly to that representative for review. If that representative has a question, they have the opportunity to go and speak directly with the decisionmaker and, if there is a difference of opinion there, they can certainly work out that difference of opinion or resolve it. Certainly, if there is a clear mistake made, typographical error, I have seen all kinds of things that we are able to resolve just by that open line of communication. We can clear it up there instead of letting it go through the process.

Mr. HALL. In developing a remand, how does the work done by the AMC differ from that done for the same purpose by the ROs? And can you describe an average remand that is processed by the AMC?

Mr. RUSSO. Sure. Mr. Chairman, the work itself is very similar to that of the regional offices with the one exception that the remand actually has orders in it telling the VBA folks what exactly to go and obtain in order to make that claim ready for a final decision. So what they do is they enumerate a list of orders that the people on my staff go and get the particular type of evidence. For example, it might be medical evidence from particular private doctors. It might be Federal records from different agencies and ultimately it will probably be an examination and a medical opinion.

And my staff goes ahead and literally puts a checklist together enumerating exactly what they are doing to accomplish each one of those remand orders. When those remand orders are complete, and only when those remand orders are complete, is it certified as a ready-to-rate case.

I had mentioned in my oral testimony about a technical expert on each particular development team. There are cases that are a little bit more complicated. Those technical experts are there to assist the other members of those teams in the more complicated cases. They are also there to review internally some of the quality of the work. And if they see mistakes are being made before it is certified as ready-to-rate—ready for a decision, they go ahead and correct those errors and make sure that the evidence is properly obtained before it is sent up for a decision.

Mr. HALL. Thank you. Mr. Russo, with your new hires, do you believe that the AMC is staffed adequately and has adequate resources? And when do you think you will be able to meet your stated long-term goal of self-sufficiency?

Mr. RUSSO. Yes. I do believe that we are staffed adequately. I couldn't give you an estimate as to when I would believe we would make our long-term goal of being self-sufficient. Everything hinges upon the number of claims that are being filed each particular year. The number of claims that are appealed, and a number of remands that we get from the Board of Veterans' Appeals.

I will tell you that the area that I have concentrated on in my two plus year tenure as the Director of the Appeals Management Center is to properly get and gather the evidence so that a final

decision can be made. This was an area that I thought was deficient in the Appeals Management Center and that was the area of concentration that I decided we needed to pay the most attention to. And that is what we have accomplished.

Mr. HALL. Okay. Considering that, what is your best estimate as to when the backlog of over 18,000 cases can be reduced?

Mr. RUSSO. New decisionmakers have been hired. They are currently being hired. And it is approximately a 2 year, minimum 2-year training program before they are considered to be journeymen level. So I estimate most of the decision makers that we have recently hired would be fully trained and considered journeymen by third quarter Fiscal Year 2008.

Mr. HALL. Okay. How does the AMC's role in the broader claims processing system add to or affect the workload of the BVA and the regional offices?

Mr. RUSSO. I didn't catch the entire question, Mr. Chairman.

Mr. HALL. Oh. How does the AMC's role in the broader claims processing system add to the work of the BVA and the—or does it in your opinion affect the work of the BVA and the regional offices?

Mr. RUSSO. The broader claims load is what you are asking. I would say it doesn't. The AMC is created to address the remand workload.

Mr. HALL. Uh huh.

Mr. RUSSO. So when a remand comes from the Board of Veterans' Appeals instead of going to the regional offices for further development, it comes to the central location in Washington, the Appeals Management Center, and it handles that workload. The AMC does not handle the regular, first-time claims that are filed at the regional offices.

Mr. HALL. So it is either neutral or beneficial in terms of the work that is required of BVA or the regional offices?

Mr. RUSSO. Yes.

Mr. HALL. Okay. That is—thank you. Chairman Terry, could you explain, please, the BVA's and the VA's work measurement system with some detail in terms of the emphasis in terms of awarding points for quantity or quality. Is more emphasis placed on quantity because of the great number of cases that are before us? And if not, why do you think there is such a belief held by so many veteran stakeholders?

Mr. TERRY. I would be delighted to answer that. I think where our focus is both on quality and quantity, and I take issue with the view of most veterans do not think that we are doing a great job. I go around the country every day and I think that the great majority of veterans you talk to will tell you that we are doing a good job.

Let me just start with our quantity. First, sir, we asked each of our attorneys to go through an incredibly intense training program when they come on board. We are seeking to hire clerks who have been clerks for Federal judges in nearly every instance. In fact, our pool right now and the people we are interviewing—the great majority of them have served as clerks. We are finding the great people out there and we train them over a period of approximately 6 months before they go on production and are rated in terms of the decisions they write.

So it is that initial 6-month intense training program where they were mentored on a daily basis by a senior attorney and by a judge who looks at every one of their cases and they grow and develop expedientially during that period of time. We start our people at the lowest level in terms of the complexity of the cases, and by their third year, they are expected to do most every case that we can find within our inventory.

You have to remember that we have an intense training program that we have developed in the Board and I have supported tremendously. Every month we have at least one training session, normally of 2 hours. We invite the local Bar. That is our Bar Association from the Court. And we invite general counsel participants as well and we get good participation from both.

Those are videotaped and they are made available to our attorneys as an issue comes up so they can look back at those training sessions, but we feel that our training is among the best available in the Federal Government today.

We ask our attorneys to draft between three and four decisions a week when they are competent and they are certified by their judge as ready and able to do so. We evaluate every one of those decisions as it comes out. It is evaluated by the, first of all, the mentor in the first 6 months and thereafter by their judge. That case is reviewed and certainly as we look at those cases by our young attorneys, they are both used as training tools and certainly as a means by which we can help the attorney grow in stature and in competency.

We have a quality review program which we also think is a fine program and this is certainly what we were talking about before when we talked about the 93 percent error-free rate. And that rate is designed to show us in reviewing a selected number of our decisions that there are no substantive or procedural errors which would have resulted in the case being reversed or remanded by the Court of Appeals for Veterans Claims. Now there has been talk of a 71 percent error rate. That is simply not the case. I have the statistics from last year right here and certainly as I mentioned to you, 40 percent of the cases last year were either affirmed or dismissed. There were 29 percent that were remanded and then there were 18 percent of the total were reversed, vacated, and remanded.

So I mean, I think you need to take a look very carefully at the Court's own statistics before you rush to judgment in that regard. Certainly we are dealing in every case with an open record and a system which requires a remand if in fact something is presented after the case is on our docket back to the RO for a complete review. And that is a problem. It is a tremendous problem. And we have addressed it before your Committee previously and certainly it is among the legislative proposals in addition to the paperless record, which we strongly support. By the way, on the paperless record you need to know, sir, that the Court rules right now require a paper record and until that changes both with the Court of Appeals for Veterans Claims and the Federal Circuit, that is not going to change. We think it is a wonderful idea. We join our colleagues from the first panel. We certainly applaud it. But until the Court agrees to it and changes their rules of procedure, that is not going to change.

Mr. HALL. Well we will be resigned to duplication maybe for some period of time, which might be a good thing in case the hard drive crashes. But, you know, part of our issue here is resolving different statistics and different numbers that we are hearing.

So I wanted to ask you, Mr. Chairman, we heard testimony today that the denial rate of cases from the BVA on the merits hovers around 71 percent. Your Fiscal Year 2006 annual report does not provide a definitive total denial rate.

Mr. TERRY. We grant, sir, just like most appellate courts—we are in the range of between 20 and 23 percent and have been for the last 7 years. Similarly, if you look at the Court of Appeals for Veterans Claims, their grant rate last year, that is reversing us, was about the same. It is at 19 percent. So in looking at appellate courts and what they do, they are looking at whether or not the group below, the body below, made an error.

And I think that when we look at certainly, when you look at the situation with the Veterans Benefits Administration, they are deciding 815,000 cases and they are granting a large number of those cases, but certainly not 95 percent. And so certainly I think you have to look at the system in the entire context.

Certainly with the ease in which in our system one can appeal when you look at only 5 percent of VBA's claimants seeking redress. And when you look at only 9 percent of those before our Board with the ease by which they can appeal seeking redress. And when you look at the number of cases that are upheld by the Court of Appeals for Veterans Claims, it is averaging 40 percent last year and this year in terms of those that are dismissed or those that are affirmed. And then when you look at the number that are sent back for further development, not because they are wrong or that we should be changed, but because either the law has changed, sir. You have to remember that when the Court of Appeals for Veterans Claims sees a case from our Board they are seeing it 2 or 3 years down the road. That is how long it takes for them to get to it. I would like to say it was sooner, but that is not the case.

Mr. HALL. Right.

Mr. TERRY. And the law changes and it is retroactively applied.

Mr. HALL. Could you tell us if there is a place in your annual report where we can find what your figure for the BVA's denial rate is?

Mr. TERRY. For the what rate?

Mr. HALL. The BVA's denial rate, what you believe it is. And is there a location in your annual report where we can find it?

Mr. TERRY. Well certainly you can figure it out based on the number of cases that are remanded for further development, which is last year as you know 32 percent. And the number we granted, which last year was 21 percent. And then there is the category, I believe of "others." And so for example, we would have upheld the VBA on the remainder of those cases. We would have found that they made the right decision. It is not a denial rate, it is a finding that they have made the proper decision below.

Mr. HALL. Okay.

Mr. TERRY. Of that 5 percent of the people who have appealed.

Mr. HALL. Okay. In your Chairman's Report you stated that the BVA has maintained a decision quality at over 93 percent. We are

trying to understand and reconcile with earlier testimony that the Court of Appeals of Veterans Claims has set aside, either through remand or reversal, a large majority of 76 percent.

Mr. TERRY. Well as I say, I think you need to take a careful look at their own annual report. I have it right in front of me and that certainly is not indicative of this report. So I mean I listened to the prior panel as well, and you know, when you are trying to present your perspective it is interesting.

Mr. HALL. Can you explain how your decision quality percentage is calculated and how we should reconcile these different numbers?

Mr. TERRY. Absolutely. What we do is we look at a certain number of our cases randomly taken and we basically look and see whether they were subject to a procedural error which would of resulted in the case being reversed or remanded. And we evaluate and basically correct in-house any procedural or substantive errors before it goes out, but that is the way we keep a measure of effectiveness and use that as part of our training program.

Now the U.S. Government Accountability Office (GAO) has taken a very careful look and reviewed this. We have a report and would like to share it with you in which they have applauded our program and said it was actually exemplary. We would be delighted to share that with you.

[Two GAO reports were supplied to the Committee and will be retained in the Committee files. The reports are entitled, "Veterans' Benefits—Quality Assurance for Disability Claims and Appeals Processing can be Further Improved," August 2002, GAO–02–806; and "VA Disability Benefits—Board of Veterans' Appeals Has Made Improvements in Quality Assurance, but Challenges Remain for VA in Assuring Consistency," May 5, 2005, GAO–05–655T, Testimony Before the Subcommittee on Disability Assistance and Memorial Affairs, Committee on Veterans' Affairs, House of Representatives by Cynthia A. Bascetta, Director, Education, Workforce and Income Security. GAO Report Number GAO–02–806 can be obtained from the GAO website at http://www.gao.gov/new.items/d02806.pdf, and GAO Report Number GAO–05–655T at http://www.gao.gov/new.items/d05655t.pdf.]

Mr. HALL. Thank you. We would appreciate that.

Mr. TERRY. Thank you very much. We will do that.

Mr. HALL. And we heard testimony today that as BVA has increased its focus on productivity there has been a decrease—a dramatic increase in the denial of claims while approvals have stayed relatively the same. To what do you attribute this, if you agree with it, statistically asymmetrical trend?

Mr. TERRY. I don't think the denials have remained the same or have increased by any means. I think we have upheld the Veterans Benefits Administration to a greater degree as they have improved the quality of their decisionmaking below. I think that is a trend which we have seen and we have seen it too in the sense that our remand rate, as I had mentioned before, went from 56.8 percent in 2004 down to 32 percent last year and it is holding at that.

Now clearly the remand rate at the Court of Appeals for Veterans Claims went down this year too from 33 percent last year to 29 percent this year. And I think it is important—from 2007 at this point—and I think through August. So I think it is important that

those figures be kept in perspective as well. I think the entire system benefits and improves as increased training is provided. One of the things we do, sir, in each of the 126 travel boards that we send out each year, is the last 2 days we work with the VBA staff, rating staff, and provide our insights and our training. We find that to be a tremendous opportunity and I think it really works well. And I think this has a tremendous affect on their effectiveness.

Mr. HALL. Thank you, sir. I wanted to ask you, given the fact that you know statistics are one groups' or one persons' percentages or figures may or may not be as accurate as the others, but we are still looking at roughly a 2-year period for a decision to be made by the Board on average.

Mr. TERRY. Well you have to remember, sir, that while we are at July and August 2005 right now, we take more than 12,000 cases a year and move them ahead of the pack, because either the person is aged, is infirm, has a financial disability of some kind, or it is a remand case. That goes to the head of the line.

Mr. HALL. Right.

Mr. TERRY. So any——

Mr. HALL. The rest of the question. Excuse me, sir. But the rest of the question was going to be, what can we in Congress do to help you, to help the VBA shorten the length of the appeals process? More people? Legislative mandates?

Mr. TERRY. I would love to respond to that, because I think the prior panel hit on a number of very, very good thoughts. And we certainly feel that a paperless record is absolutely mandated. We would welcome your support in that regard and your support with the Judiciary Committee to make that happen. It is going to have to come out of that Committee and certainly we are going to have to gain their support.

We would really greatly appreciate your help in that regard. We think certainly closing the record as long as the individual is totally protected. One of the great concerns of the VSO community has been that they are afraid to close the record because they are afraid they are going to lose the date, the claim's original date. We would not object to that whatsoever. We think that certainly preserving the date on which the claim was originally filed is a date of record is absolutely incredibly important. We think that would help tremendously.

Now with the Hodge case which came down 3 years ago, there is absolutely no difficulty whatsoever in reopening with any new and material evidence. All it need do is shed new light or give a new perspective on the proceeding and if so, the case is reopened.

I think that the time has come to make these proceedings more in line with other proceedings in the Federal Government and move forward while at the same time giving every opportunity for the veteran to prevail.

Mr. HALL. Thank you. In your testimony you stated that BVA is currently operating below a required personnel level. Current Fiscal Year 2008 appropriation levels would provide for more FTEs for the BVA. Do you feel this increase would be sufficient to handle the increased input you have been experiencing and make headway to-

ward eliminating the backlog? And what would be the ideal staffing size to ensure the timeliest decision possible for our veterans?

Mr. TERRY. Thank you, Mr. Chairman. We have testified previously and before the full Committee and certainly before the Office of Management and Budget (OMB) that our staffing needs to begin to reflect what it was 15 years ago. If you recall in 1997, sir, we were at 492 FTE's. We are at 444 this past year up from 434 the year before that.

We have more cases in our docket. We have more complex cases, multi-issue cases, and certainly 444 is not reflective of what we need. OMB and the appropriators have agreed to give us 31 in the 2008 budget. We believe that will occur. We have likewise urged the Secretary, and he supported this, that we seek an additional 25 in 2009. Our understanding is that this is moving forward with our submission as a Department. We would certainly appreciate any support that your Committee could give us in that regard. Greatly appreciate it, sir.

Mr. HALL. You can count on it. We are trying.

Mr. TERRY. Thank you very much, sir. I greatly appreciate that.

Mr. HALL. Last, I wanted to ask you what do you think caused the remand rate to increase so dramatically in Fiscal Year 2004? And do you think it was a one-time issue or a trend that may reoccur?

Mr. TERRY. There are a great number of reasons, the greatest of which was the interpretation by the Court of Appeals for Veterans Claims and the Federal Circuit of the "Veterans Claims Assistance Act" and the cases hitting the Board at that point. Certainly, that we have all recognized that to be the case. We have overcome that. And the other thing was that Congress mandated that the Court of Appeals for Veterans Claims carefully provide a prejudicial error analysis in our cases. And they were not doing so, they have begun to do so and that has had a tremendous impact. The new Chief Judge has been extremely influential in that regard and we greatly appreciate it.

Mr. HALL. If you have the patience for one more, I was wondering if you could provide us with the details of the Expedited Claims Adjudication Initiative. Has it launched? And if so where and how is it working?

Mr. TERRY. The Initiative is a pilot program to be established in four of our regional offices. It is designed to ensure that not so much that things be done differently, but that excess time not required to proceed with a veterans claim be taken advantage of and the case be moved forward more quickly.

This would simply ensure that cases are not sitting on the shelf waiting for time to expire. This is the easiest way I can explain it. An individual would opt in within 30 days of filing a claim. He can opt out at any time. If he should opt out by not making the new time processing requirements in the program he would simply go back into the regular queue as if he had been in the queue the entire time.

Mr. HALL. Mr. Chairman, Mr. Russo, thank you both for your patience and for the work that you do and your service to our veterans. We have a big problem to solve together, but I am confident that we can. And that is the spirit that will take for us to solve

it, or at least—it is a work in progress. It is progress not perfection, I am sure.

We will keep working toward that. And minority counsel will submit Mr. Lamborn's questions for the record and perhaps you could respond in writing to them if——

Mr. TERRY. Absolutely.

Mr. HALL [continuing]. You would be so kind.

Mr. TERRY. And thank you so much for the opportunity.

Mr. HALL. And thank you for your patience and for hanging in there all afternoon with us. The record will remain open for 5 business days. Now this panel is excused and the Committee is adjourned.

[Whereupon, at 5:04 p.m., the Subcommittee was adjourned.]

APPENDIX

Prepared Statement of Hon. John J. Hall, Chairman, Subcommittee on Disability Assistance and Memorial Affairs

I would ask everyone to rise for the Pledge of Allegiance—flags are located in the front and in the rear of the room.

I would first like to thank the witnesses for coming today to appear before the Subcommittee. I know the challenges presented by the growing backlog at the Board of Veterans' Appeals and at the AMC are troubling for us all. Making the administrative appeals process better and quicker for our veterans is our shared priority and I thank you for joining me in helping to find workable solutions.

As many of you know, the Board of Veterans' Appeals, established in 1933, is designed to provide the veteran with an opportunity to appeal a decision issued by one of the 57 Regional Offices (RO) of the VA. No one disputes the importance of this step in the claims process, but unfortunately it has become more foe than friend to our veterans seeking a decision on an RO appeal. Moreover, it seems to be an unspoken belief held by many veterans and their advocates that given the variances in RO level decisions, an appeal to the BVA is almost a necessity.

However, appealing an RO decision presents many challenges for our veterans. With a current backlog of over 39,000, the average length of an appeal filed with the BVA is an amazing 761 days. This inefficiency is only exceeded by the outcome of these long waits—a 71 percent denial rate by the BVA. Also, although BVA claims a 93 percent accuracy rate, the Court of Appeals for Veterans' Claims sets aside or remands over 76 percent of cases appealed, indicating a much lower accuracy rate in reality. It is clear from reading the BVA's annual report to Congress that these percentages may not be based on the same statistics.

There are many reasons for the current 40,000 case backlog at the VBA. First, as pointed out by several veterans' advocacy organizations in their testimonies—an entity, such as the BVA, which employs a system of rewards based on the quantity of work inputs rather than the quality of those work inputs, will soon become an organization that adopts the principle of quantity over quality, consciously or unconsciously.

Additionally, unless the VA standardizes the training process for its raters, this often subjective system will continue to yield inequitable results. Most claims raters indicate that their major source of learning was on-the-job training. As the preliminary findings of the Disability Benefits Commission indicate, over 50 percent of raters believe that they are ill-equipped to perform their jobs and over 80 percent of raters and VSOs believe there is too much emphasis placed on speed relative to accuracy. Also, as the recent *IDA Report (Analysis of Differences in VA Disability Compensation)* on variances in VA's disability compensation recommended, the VA undoubtedly needs to:

- standardize initial/ongoing training for rating specialists;
- increase oversight of rating decisions;
- develop and implement metrics to monitor consistency in adjudication results; and
- increase oversight and review of rating decisions and improve and expand data collection and retention.

And, as pointed out by the *IDA Report,* the current STAR program is insufficient to promote consistency in ratings across regional offices, as very little action is taken on any trends found at regional offices. Among other things, I want to hear what the VBA intends to do to improve this program as well as an update on its Expedited Claims Adjudication Initiative efforts.

The increased workload at both the AMC and the BVA is not lost on this Committee.

The most recent FY 2007 figures indicate that there are more than 18,300 remands pending at the AMC and about 39,206 appeals awaiting adjudication at the

BVA. Moreover, the BVA expects to receive up to 48,000 appeals through the course of 2007. As such, any increase in productivity has not been able to keep pace with the increase of claims being sent to the BVA.

I am heartened by the fact that the FY 2008 Budget Resolution allowed and the FY 2008 MilCon-VA Appropriations bill will provide funding for 1,000 FTEs to help with the growing backlog. This fact notwithstanding, I firmly believe that the only way to maximize VBA employees' effectiveness in lessening the backlog is to give them the necessary tools and training to provide accurate ratings.

To be clear, it is not my intention simply to point out the shortcomings of the BVA or the AMC. I think we should all abide by the underlying and stated principles of the entire VA system, which is to provide a non-adversarial system for awarding our veterans the benefits they have earned. We need to begin to see ourselves, the VA, Congress, VSOs, and advocacy organizations alike, as partners in fulfilling this mission.

I also firmly believe that with the expected surge in filings by returning OIF/OEF veterans, the VA, as the "gateway" for and the creator of the record that forms the basis for appellate review, should amplify its role in the benefits claims adjudication process to get our veterans off the appeals "hamster wheel".

I hope to hear testimony that will yield recommendations that are consistent with producing the best outcomes for our veterans appealing RO decisions.

Prepared Statement of Hon. Doug Lamborn, Ranking Republican Member, Subcommittee on Disability Assistance and Memorial Affairs

Thank you, Mr. Chairman, for recognizing me. I thank you for holding this hearing on the Board of Veterans' Appeals and its role in the efficient processing of disability compensation claims.

I welcome our witnesses, especially Chairman Terry, and thank you all for your contributions to the veterans' affairs system.

As everyone is aware the VA's compensation and pension backlog has reached an epic and disgraceful level. While I understand that there are numerous challenges facing the Board and the appeals management center, both play a significant role in veterans waiting many months if not years for an accurate rating.

I agree with Mr. Smithson of the American Legion that we can't just look at the Board in a vacuum. Poor quality work at the regional office level results in much larger problems later in the appeals process.

We must ensure that rating boards strive to achieve thoroughness and accuracy along with efficiency in their work. Doing so is a key step toward eventual elimination of the backlog.

I do want to commend Chairman Terry for the excellent work the Board is doing. They are deciding a record number of appeals this Fiscal Year. While your output has increased the number of claims waiting to be reviewed is still too high.

While I agree that Congress needs to adequately staff the Board and the appeals management center, I don't believe that hiring more people is the only solution. I also acknowledge that there is no silver bullet that will make a significant and immediate impact on the backlog. However, I do believe that the system needs to be fundamentally changed. That is why I am anxiously awaiting the findings of the disability commission that reports next month.

While fundamental change is needed, I believe that we can take immediate, vital action by passing H.R. 3047, the Veterans Claims Processing Innovation Act of 2007.

H.R. 3047 will bring VA's compensation and pension system into the 21st century. By increasing accountability and leveraging technology at the Veterans Benefits Administration, this bill would improve the accuracy and speed of benefits claims; and I commend it to the attention of my colleagues.

Several of the provisions of H.R. 3047 are recommendations from our witnesses today and I thank them for their support.

I thank you Mr. Chairman for promising to hold a legislative hearing on H.R. 3047 next month and I hope that you will soon join 24 of our colleagues in cosponsoring this bipartisan bill.

I want to thank the witnesses for their testimony and I yield back.

Prepared Statement of Barton F. Stichman, Joint Executive Director, National Veterans Legal Services Program

Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to present the views of the National Veterans Legal Services Program (NVLSP) on the adjudication process of the Board of Veterans' Appeals and the Appeals Management Center.

NVLSP is a nonprofit veterans service organization founded in 1980. Since its founding, NVLSP has represented over 1,000 claimants before the Board of Veterans' Appeals and the Court of Appeals for Veterans Claims (CAVC). NVLSP is one of the four veterans service organizations that comprise the Veterans Consortium Pro Bono Program, which recruits and trains volunteer lawyers to represent veterans who have appealed a Board of Veterans' Appeals decision to the CAVC without a representative. In addition to its activities with the Pro Bono Program, NVLSP has trained thousands of veterans service officers and lawyers in veterans benefits law, and has written educational publications that thousands of veterans advocates regularly use as practice tools to assist them in their representation of VA claimants.

I. The Adjudication Process of the Board of Veterans' Appeals

The fact that stands out most prominently when it comes to assessing the performance of the Board of Veterans' Appeals is the track record that Board decisions have experienced when an independent authority has examined the soundness of these decisions. Congress created an independent authority that regularly performs this function—the U.S. Court of Appeals for Veterans Claims. Each year, the Court issues a report card on BVA decisionmaking. This annual report card comes in the form of between 1,000 and 2,800 separate final judgments issued by the Court. Each separate final judgment incorporates an individualized judicial assessment of the quality of a particular one of the 35,000 to 40,000 decisions that the Board issues on an annual basis.

For more than a decade, the Court's annual report card of the BVA's performance has been remarkably consistent. The 12 annual report cards issued over the last 12 years yields the following startling fact: of the 16,550 Board decisions that the Court individually assessed over that period (that is, from FY 1995 to FY 2006), the Court set aside a whopping *77.7 percent* of them (that is, 12,866 individual Board decisions). In each of these 12,866 cases, the Court set aside the Board decision and either remanded the claim to the Board for further proceedings or ordered the Board to award the benefits it had previously denied. In the overwhelming majority of these 12,866 cases, the Court took this action because it concluded that the Board decision contained one or more specific legal errors that prejudiced the rights of the VA claimant to a proper decision.

By any reasonable measure, the Court's annual report card on the Board's performance has consistently been an "F". But an equally startling fact is that despite a consistent grade of "F" for each of the last 12 years, no effective action has ever been taken by the management of the BVA to improve the Board's poor performance. Year after year, the Court's report card on the Board has reflected the same failing grade. If the Board had been subject to the "No Child Left Behind" rules that govern our Nation's public schools, it would have been shut down long ago.

To formulate an effective plan to reform the Board and significantly improve its performance requires an understanding of the underlying reasons that the Board has consistently failed in its primary mission (i.e., to issue decisions on claims for benefits that comply with the law). Over the last 15 years, NVLSP has reviewed over 10,000 individual Board decisions and thousands of Court assessments of these decisions. Based on this review, NVLSP has reached three major conclusions, which are set forth below.

The Board Keeps Making the Same Types of Errors Over and Over Again

The decisions of the Board and the final judgments of the Court reflect that the Board keeps making the same types of errors over time. For example, one common error involves the type of explanation the Board is required to provide in its written decisions. When Congress enacted the Veterans' Judicial Review Act 1988, it expanded the type of detail that must be included in a Board decision to enable veterans and the Court of Appeals for Veterans Claims to understand the basis for the Board's decision and to facilitate judicial review. See 38 USC § 7104(d).

The Board has consistently been called to task by the Court for faulty explanations that violate 38 USC § 7104(d). These violations fall into several common patterns. One pattern is that the Board often does not assess or explain why it did not credit positive medical evidence submitted by the claimant from a private physician,

while at the same time expressly relying on a negative opinion provided by a VA-employed physician. The problem here is not that the Board decided to believe the VA physician and disbelieve the private physician. The problem is that the Board never explained its analysis (if indeed, it had one) of the private physician's opinion in the first place.

Another common pattern involves lay testimony submitted by the claimant and other witnesses. Despite the statutory and regulatory obligation (38 USC § 5107(b) and 38 C.F.R. § 3.102) to give the veteran the benefit of the doubt in adjudicating a claim for benefits, in many of the Board decisions that have been set aside by the Court, the Veterans Law Judge has refused in his or her written decision to assess, no less credit, this lay testimony. The decisions of the Federal Circuit and the Court of Appeals for Veterans Claims in *Buchanan v. Nicholson,* 451 F.3d 1331, 1336–37 (Fed. Cir. 2006), and *Kowalski* v. Nicholson 19 Vet. App. 171, 178 (2005) chronicle this refusal to analyze the validity of lay testimony.

Sometimes the lay testimony that the Board refuses to analyze involves what happened during the period of military service. The underlying philosophy in these Board's decisions appears to be: "If the event is not specifically reflected in the existing service medical or personnel records, we don't need to assess the lay testimony"—no matter what lay testimony has been submitted.

Sometimes this lay testimony involves the symptoms of disability that the veteran experienced following military service. Despite the legal obligation to consider lay evidence attesting to the fact that veteran continuously experienced symptoms of disability from the date of discharge to the present, the Board often denies the claim on the unlawful ground that the evidence in the record does not show that the veteran was continuously provided medical treatment for the disability, without assessing the lay evidence of continuity of symptomatology.

Another common Board error is to prematurely deny the claim without ensuring that the record includes the evidence that the agency was required to obtain to fulfill its obligation to assist the claimant in developing the evidence necessary to substantiate the claim. The statutory duty placed by Congress on the VA to provide such assistance is a fundamental cornerstone of the nonadversarial pro-claimant adjudicatory process. Unfortunately, the Board often fails to honor this very important obligation.

Board Management Does Not Downgrade the Performance of a Veterans Law Judge for Making These Types of Errors

One method of eliminating repetitive types of Board errors would be if Board management downgraded the performance of Veterans Law Judges for repeatedly violating deeply embedded legal principles. This has not been done.

The problem is not that Board management fails to assess the performance of the Board's Veterans Law Judges. Board management does conduct such assessments. The problem lies in Board management's definition of poor performance. As the chairman of the board stated in his FY 2006 Report, Board management assesses the accuracy of Board decisionmaking and its assessment is that Board decisions are 93 percent accurate.

There obviously is a major disconnect between the annual report card prepared by the Court of Appeals for Veterans Claims and the annual report card prepared by Board management.[1] How can it be that year in and year out the Court consistently concludes that well over 50 percent of the Board decisions contain one or more specific legal errors that prejudiced the rights of the VA claimant to a proper decision, while at the same time Board management concludes that only 7 percent of Board decision-making is inaccurate?

NVLSP understands that there is a simple answer to this question. Board management simply does not count as "inaccurate" many of the types of prejudicial legal errors that have forced the Court to set aside the Board decision and place the veteran on the well-known "hamster wheel" of remands and further administrative proceedings. In this way, Board management actually promotes, rather than discourages, these errors of law.

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[1] Because the only BVA decisions that the Court assesses are those appealed to the Court by a VA claimant, the decisions the Court reviews are self-selected by VA claimants. They do not represent a true random sample of BVA decisionmaking. Thus, it does not necessarily follow that the Board's overall error rate is 77.7 percent.

On the other hand, the Court's report cards undoubtedly indicate that the Board's overall error rate is quite high. In NVLSP's experience, many of the BVA decisions that are not appealed to the Court contain the same types of errors as those contained in the decisions that are appealed to the Court. Some veterans do not appeal these flawed decisions because after years of pursuing their claim, they simply give up.

Board Management's Campaign to Avoid "Unnecessary Remands" Contributes to the Board's Poor Performance

Another policy adopted by Board management that contributes to the Board's poor performance is its campaign to avoid "unnecessary remands" from the Board to the regional offices to correct prejudicial errors made by the regional office in developing the evidentiary record. If this campaign truly influenced the Board to avoid "unnecessary" remands, NVLSP would applaud the effort because it would help eliminate the "hamster wheel" phenomenon that plagues the VA adjudication process. But the problem is that this campaign has promoted Board decisions that prematurely deny the claim without a necessary remand to the regional office to obtain the evidence that the law required, but the RO failed to obtain, before the case ever reached the BVA. This unlawful failure to remand actually contributes to the "hamster wheel" phenomenon by forcing the claimant to appeal to the Court, which, after a year or two, sets the Board decision aside with instructions for the Board to do what it should have d1 years earlier—send the case back to the RO to obtain additional evidence.

NVLSP's Recommendations

Recommendation 1: Adopt the Long-Standing Process Used and the Protections Afforded to Administrative Judges Who Adjudicate Disputes in Other Federal Agencies. NVLSP believes that one of the major steps that Congress should take to reform the Board and significantly improve its performance is to change the methodology used to select the individuals who adjudicate appeals at the Board of Veterans' Appeals. These individuals, called Veterans Law Judges (VLJs), are usually long-time VA employees who are promoted to this office from within the agency. By the time they become a VLJ, they often have adopted the conventional adjudicatory philosophy that has long held sway at the VA—an adjudicatory philosophy that underlies the failing grade assigned by the Court. Moreover, Veterans Law Judges do not enjoy true judicial independence.

In the Federal administrative judicial system outside the BVA, most judges are administrative law judge (ALJs). An ALJ, like a VLJ, presides at an administrative trial-type proceeding to resolve a dispute between a Federal Government agency and someone affected by a decision of that agency. ALJs preside in multi-party adjudication as is the case with the Federal Energy Regulatory Commission or simplified and less formal procedures as is the case with the Social Security Administration.

The major difference between Federal ALJs and the VLJs that serve on the Board of Veterans' Appeals is that ALJs are appointed under the Administrative Procedure Act 1946 (APA). Their appointments are merit-based on scores achieved in a comprehensive testing procedure, including an 4-hour written examination and an oral examination before a panel that includes an OPM representative, American Bar Association representative, and a sitting Federal ALJ. Federal ALJs are the only merit-based judicial corps in the United States.

ALJs retain decisional independence. They are exempt from performance ratings, evaluation, and bonuses. Agency officials may not interfere with their decision-making and administrative law judges may be discharged only for good cause based upon a complaint filed by the agency with the Merit Systems Protections Board established and determined after an APA hearing on the record before an MSPB ALJ. See Butz v. Economou, 438 U.S. 478, 514 (1978).

There are many attorneys who have never been employed by the VA who are familiar with veterans benefits law and who are eminently qualified to serve as an administrative judge at the Board of Veterans' Appeals. Moreover, while use of the ALJ process may not always result in the selection of an individual with a great deal of experience in veterans benefits law, it should not take a great deal of time for someone without such experience to become proficient. The experience of the many judges who have been appointed to the Court of Appeals for Veterans Claims without prior experience in veterans benefits law attests to this proposition. NVLSP believes the likelihood of improved long-term performance of a judge selected through the ALJ process greatly exceeds whatever loss in short-term productivity may result if someone who is not steeped in veterans benefits law happens to be selected.

Recommendation 2: The Criteria Used in, and the Results of the Evaluation System of VLJs Employed by Board Management Should Be Publicly Available and Reported to Congress. This recommendation may not be necessary if Congress adopts the first recommendation. But if Congress does not embrace the ALJ system for the BVA, it should at least require Board management to make publicly available the details of the system it employs for evaluating and

rewarding the performance of VLJs and the results of the evaluation as applied to individual VLJs. When the evaluation system employed by Board management results in the conclusion that 93 percent of all Board decisions are accurate, it is plain that the evaluation system suffers from serious defects. Oversight of this system requires that it be made publicly available and reported to Congress.

II. The Adjudication Process of the Appeals Management Center

Turning to the adjudication process of the Appeals Management Center, the most prominent problem faced by the AMC is lack of adequate resources. The backlog of remands from the Board of Veterans' Appeals languishing at the AMC is simply unacceptable. The Achilles Heal of the entire system is the lack of quality in the initial decisionmaking process at the VA regional offices. But if one were forced to ignore the needed reformation of this initial decisionmaking process, then providing adequate financial resources to the AMC should be a high legislative priority.

Prepared Statement of Richard Paul Cohen, President, National Organization of Veterans Advocates, Inc.

Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to present the views of the National Organization of Veterans Advocates, Inc. ("NOVA") on the adjudication process at the Department of Veterans Affairs' ("VA") Board of Veterans' Appeals ("BVA") and the Appeals Management Center ("AMC").

NOVA is a not-for-profit § 501(c)(6) educational organization incorporated in 1993 and dedicated to train and assist attorneys and non-attorney practitioners who represent veterans, surviving spouses, and dependents before the United States Court of Appeals for Veterans Claims ("CAVC" or "Veterans Court") and on remand before the VA. NOVA has written many amicus briefs on behalf of claimants before the CAVC and the United States Court of Appeals for the Federal Circuit ("Federal Circuit"). The CAVC recognized NOVA's work on behalf of veterans when it awarded the Hart T. Mankin Distinguished Service Award to NOVA in 2000. The positions stated herein have been approved by NOVA's Board of Directors and represent the shared experiences of NOVA's members as well as my own fifteen-year experience representing claimants at all stages of the veterans benefits system from the VA regional offices to the Board of Veterans' Appeals to the CAVC as well as before the Federal Circuit.

NOVA's members have little contact with the AMC because veterans' claims that have attorney representation are instructed to be remanded directly to the Agency of Original Jurisdiction, which usually is a VA Regional Office, for further development. However, when an attorney-represented claim does inadvertently arrive at the AMC, NOVA members experience considerable hurdles in speaking with AMC personnel regarding a claim's whereabouts and or status, as well as tremendous delays in having the claim transferred out of the AMC. As with other agency-level backlog, providing the AMC with additional staff and resources would assist greatly in resolving these issues.

With respect to the current operation of the BVA, NOVA submits the following observations and recommendations for the Subcommittee's consideration and further action:

OBSERVATION NO. 1:
The Number of Claims on Appeal Challenges BVA's Resources

As of September 1, 2001, the VA reported a backlog of 533,029 veterans' claims for VA benefits and or compensation. See Report of the Secretary of Veterans Affairs, VA Claims Processing Task Force, October 2001.

For every 100,000 claims submitted for VA benefits and or compensation, 4,600 claimants will file appeals to the BVA. Department of Veterans Affairs, "Strategic Plan for Employees", July 2007, p. 14. In addition, more than 10,000 U.S. military servicemembers are already known to have sustained physical and psychological injuries since the onset of U.S. operations in Afghanistan and Iraq. Testimony Before the Committee on Veterans' Affairs, U.S. Senate, GAO–05–444T, p. 1. As a result of the on-going wars in Iraq and Afghanistan, the VA can expect a flood of BVA appeals in the next few years. See "Strategic Plan for Employees", July 2007, p. 3.

OBSERVATION NO. 2:
The Processing Time for BVA Appeals Is Too Slow and Too Often Results In Erroneous Denials and, or Unnecessary Remands

It takes, on average, over 2 years for a veteran to get a decision from the BVA on an appeal of a denied claim. This 2-year waiting period is *in addition to* the 230 days, on average, that it takes a VA Regional Office to process and complete development of the initial claim. See Reports of the chairman of the board of Veterans Appeals, Fiscal Year 2006, p. 16. (www.va.gov/Vetapp/ChairRpt/BVA2006AR.pdf).

Moreover, after waiting over 2 years for a decision, some one-third of the BVA's decisions from the past few years consist merely of a remand, providing the veteran with yet more delays, on what has been characterized as a ride on the "hamster wheel". *See Stallworth v. Nicholson,* 20 Vet. App. 482, 491 (2006) (Lance J., dissenting); *Coburn v. Nicholson,* 19 Vet. App. 427, 434 (2006) (Lance, J., dissenting). However, the most unfortunate statistic is that over the past 6 years, the most common decision veterans have received from the BVA after waiting over 2 years is a denial of the claim.

Fiscal year	Days from appeal to decision	Total number of decisions	Decision on the merits [1]	Denials	Fiscal Yr Comm'er Report [2]
2006	741	39,076	25,644	71%	16,19
2005	750	34,175	20,985	62%	12,17
2004	724	38,371	16,574	58%	8,12
2003	890	31,397	17,160	59%	10,13
2002	905	17,231	13,373	64%	11,14
2001	648	31,557	15,537	54%	35,44
2000	829	34,028	23,041	61%	33,42

[1] Subtracting the remand decisions and other decisions from total decisions leaves only those decisions resulting in an allowance or denial of benefits, i.e., decisions based on the merits of the claim.

[2] The numbers in this column refer to pages in the respective Fiscal Year Reports of the chairman of the board of Veterans Appeals found at www.va.gov/vbs/bva/annual_rpt.htm.

OBSERVATION NO. 3:
BVA Denials Are Rarely Affirmed By The Veterans Court

The statistics provided above demonstrate the growing trend of the BVA denying veterans' claims. Yet, according to the Veterans Court, these BVA denials are rarely warranted. This fact is laid bare in annual reports from the CAVC which show that, in recent years, only an average of 20 percent of BVA's denials have been affirmed by the Court: [3]

Fiscal year	BVA denials	CAVC appeals	CAVC non-writ merits decisions	BVA affirmed
2006	18,107	3,729	2,079	21%
2005	13,032	3,466	1,209	22%
2004	9,300	2,234	1,278	12%
2003	10,228	2,532	2,090	6%
2002	8,606	2,150	818	13%
2001	8,514	2,296	2,778	1%
2000	14,080	2,442	1,556	33%

[3] See www.vetapp.uscourts.gov/documents/Annual_Reports.pdf.

OBSERVATION NO. 4:

The Structure and Organization of The BVA Has Been In Flux

Over the years, the structure and organization of the BVA has changed. When it was first created in July 1933, the BVA began as a centralized office in Washington, DC, and consisted of a Chairman, a Vice Chairman, and no more than 15 associate members, who were delegated the authority to render the final decision on appeal for the Administrator of the Veterans Administration. (Report of the Chairman, Board of Veterans' Appeals, for Fiscal Year 1995, p. 1, 8). But, by the sixties, the Board grew to 14 sections of three members each, and by 1984, expanded to 19 three-member sections. All of this expansion was a result of increased appellate processing time at the BVA (Chairman's Report, Board of Veterans' Appeals, for Fiscal Year 1995, p. 2).

On November 18, 1988, the Veterans' Judicial Review Act (VJRA), Pub. L. No. 100–687, established the United States Court of Veterans Appeals (now officially renamed the United States Court of Appeals for Veterans Claims), thereby providing an Article I court of review, separate and distinct from the VA, available to veterans whose claims are denied by the BVA. The VJRA also created increased demand for a "travel board" hearing. Beginning in 1992, and relying on statutory authority contained in 38 USC § 7102(b), the BVA began holding hearings both in Washington, DC, and in regional offices utilizing a single board member but still continued to make decisions by a section consisting of three board members. (Chairman's Annual Report, Board of Veterans' Appeals, Fiscal Year 1991, p. 3).

Then, in July 1994, following the passage of the BVA's Administrative Procedures Improvement Act of 1994, individual board members, acting alone, began to issue decisions (Pub. L. No. 103–271, § 6, 108 Stat. 740, 741; Report of the Chairman, Board of Veterans' Appeals, for Fiscal Year 1995, p. 6, 7). Later, in late-1995, the BVA was restructured—again—into four decision teams comprised of board members and staff counsel to review and decide appeals, operating as semi-autonomous entities with latitude regarding internal operating procedures, having a workload structured along geographical lines with responsibility for deciding appeals originating from specific VA regional offices (Report of the chairman, Board of Veterans' Appeals, for Fiscal Year 1995, p. 9). As of 2006, the four Decision Teams consisted of 56 Veterans Law Judges and 240 staff counsel (Report of the chairman, Board of Veterans' Appeals, for Fiscal Year 2006, p. 2).

OBSERVATION NO. 5:

BVA "Judges" Are Not Independent and Their High Number of Unjustified Remands and Erroneous Denials Are In Part The Result of Demands For Increased Productivity

As was previously shown, the BVA judges overwhelmingly deny claims and those denials are affirmed only 20 percent of the time. See Observations 3 and 4, *supra.* Nevertheless, the BVA claims a 93 percent accuracy rate regarding the decisions it issues. See Report of the Chairman of the Board of Veterans' Appeals, Fiscal Year 2006, p. 3. www.va.gov/Vetapp/ChairRpt/BVA2006AR.pdf. Moreover, although the 56 Veterans Law Judges issued 39,076 decisions in 2006, the BVA Chairman is on record as stating that the ability to conduct hearings and decide appeals on a timely basis "will present a challenge" Report of the chairman of the Board of Veterans' Appeals, Fiscal Year 2006, p. 16. www.va.gov/Vetapp/ChairRpt/BVA2006AR.pdf).

Whether BVA judges are "recertified" or are "noncertified" and have their appointment terminated is dependent upon evaluation performed by the Chairman and an inhouse panel which considers among other things legal analysis, timeliness of decisions and productivity (38 USC § 7101A(c)(1)(A), (2)-(3)). Furthermore, it is *not* the accuracy or substantive correctness of the BVA judge's decision that is evaluated; rather, it is the "productivity", i.e., the raw number of decisions issued by each BVA judge that is scrutinized.

THE BVA SHOULD BE GIVEN MORE STAFF AND FUNDING, SHOULD STREAMLINE THE MAINTENANCE OF RECORDS, AND SHOULD BE HELD MORE ACCOUNTABLE FOR ERRONEOUS, QUOTA-DRIVEN DECISIONS

RECOMMENDATION NO. 1:

Hire More BVA Judges

NOVA's first and foremost recommendation is for Congress to provide sufficient funds for the BVA to hire more judges. Increasing the number of judges is paramount to alleviating the backlog of appeals awaiting adjudication at the BVA. There simply is no other solution. BVA attorneys currently are expected to submit roughly

150 cases per year, and VLJ's, who have five attorneys writing for them, are expected to sign about 750 cases per year. That allows for only 2–3 hours per case as it is. We do not think it is reasonable to assume any large productivity gains can come from increased work output of the existing BVA attorneys and judges without quality suffering greatly. The only answer is to hire more people.

RECOMMENDATION NO. 2:

Encourage Open Communication Between BVA Judges and Veterans' Attorneys

Currently the policy at the Board of Veterans' Appeals is that its attorneys and VLJ's will have no contact whatsoever with outside counsel aside from hearings. We believe this policy is counterproductive. Ironically, the reason most often given for this policy is that such communications would be *"ex parte."* This reasoning is hollow given that there is only one party to a case before the VA—the veteran. Moreover, by law the proceedings before the Department of Veterans Affairs are supposed to be non-adversarial. Yet the BVA has concluded it is appropriate to use courtroom language and mimic the adversarial process, to the detriment of veterans.

Communication between BVA legal staff and the attorneys and agents who represent veterans is essential. As described in Observation No. 2, *supra,* the BVA oftentimes remands a veteran's appeal because either evidence needed to decide the claim is missing or due process procedures were not followed theretofore at the VA regional office. Open communication would allow agents and attorneys to waive bases for remand instead of having a case remanded for a procedural issue, which can easily take a year at the regional office. It would also allow for an explanation by the BVA as to what evidence is missing from a file and what evidence would allow for a grant.

It is therefore NOVA's recommendation that the VA establish a policy of open communication between BVA judges and veterans' agents and attorneys.

RECOMMENDATION NO. 3:

Give BVA Staffing and Resources To Complete The Technological Updating of All Veterans' Claims File Folders

The VA has already started the arduous process of transferring its paper-driven system to a paperless system. We commend them on their efforts. Completing this process as soon as possible will assist in the backlog present in the VA system-wide. We therefore respectfully suggest that Congress provide the VA and the BVA with the additional funds and staff necessary for this process to be expedited.

With respect to this process, NOVA recommends that contemporaneous to scanning a veteran's claims file folder, the documents therein should also be indexed and paginated. At the present time, to locate and review documents relevant to the merits of an appeal, the BVA judge must sift through the entire claims file folder, which currently consists of all documents related to all claims filed at any time for compensation, educational benefits, or for medical care. These records are all bound together in one file, typically in reverse chronological order, but are in no way paginated or indexed. By indexing and paginating the documents in a veteran's claims file folder, the entire appeals process at the BVA would be more efficient for the judges, the veterans, and the veterans' attorneys.

RECOMMENDATION NO. 4:

Have the BVA Change Its Internal Performance Measures So That Remands Do Not Count The Same As Decisions Made On The Merits

BVA's internal performance review system should be changed. As noted in Observation No. 5, *supra,* a BVA judge's performance is evaluated in large part based on the number of cases decided per year. Currently, BVA attorneys need to issue 156 decisions per year—or approximately 3½ per week when vacations and travel boards are factored in—in order to pass the evaluation process. This number is hard to reach, especially when faced with appeals involving multiple and, or complex issues, and voluminous claim file folders.

Presently, internal accounting regarding a BVA attorney's production assigns the same point value for remands and decisions (1 point) and assigns a point and a half for cases that encompass both a decision and a remand. Remands are much less time-consuming and are easier to write. In this way, BVA's internal performance review system is skewed such that remands are encouraged over merit-based decisions.

It is NOVA's recommendation that if the BVA changed it system so that remands would be assigned a lesser point value than a decision on the merits, far fewer superfluous remands would be issued. This solution would not affect those cases that

require a legitimate remand. But, for the marginal cases that could be decided either way, such a change would result in more decisions instead of remands, which would reduce the VA's system-wide backlog as well as curtail the number of trips on the proverbial "hamster-wheel" for the veteran.

While NOVA respects the integrity of the attorneys and VLJ's who work at the Board of Veterans' Appeals, it is simply a fact of human nature that if an organization sets up an incentive structure which rewards certain behavior, that behavior will increase. This is especially true in a stressful situation like that at the Board of Veterans' Appeals where employee production is tracked on a weekly basis and where bonuses, promotions, and even the ability to take vacation time all hinge on meeting their demanding production quota.

Prepared Statement of Carl Blake, National Legislative Director, Paralyzed Veterans of America

Mr. Chairman and Members of the Subcommittee, on behalf of Paralyzed Veterans of America (PVA), I would like to thank you for the opportunity to testify today on the Board of Veterans' Appeals (BVA or Board) process and the Appeals Management Center (AMC). The activities that occur at this level of the claims process have a significant impact on the lives of thousands of veterans each year. I will frame my statement in terms of the role that PVA plays in the appeals process, our perceptions of that process, and the challenges that face both the Department of Veterans Affairs (VA) and PVA. I will also make some recommendations that we believe could improve this process.

As you know, PVA is the only congressionally chartered veterans service organization that represents veterans with spinal cord injury or dysfunction. PVA appeals representatives play an important role in the appeals process at the BVA and the AMC. Our representatives prefer to resolve claims without the need for an appeal, by educating paralyzed veterans on the benefits provided by law, to obtain those benefits for those veterans, to avoid frivolous claims and appeals, and to aid the VA in identifying issues and assembling evidence. Our goal is to resolve differences with VA at the lowest possible level through cooperation with VA's decisionmakers. We aid the VA by identifying statutory and regulatory authorities that permit VA to grant a claim, and assist VA in obtaining the evidence the adjudicators need or choose to seek.

PVA maintains a data base and diary system to ensure that the claimant and VA perform their responsibilities in the appeals process, to include the Notice of Disagreement (NOD), Statement of the Case (SOC), and Substantive Appeal (VA Form 9), in a timely manner. When deemed appropriate, we encourage appellants to utilize the Decision Review Officer (DRO) and to utilize the opportunity to appear at a personal hearing in order to resolve appeals as early as possible. PVA helps appellants prepare for hearings and appears with appellants at hearings.

When efforts to resolve disputes are unsuccessful at the VA regional office (RO), we prepare and submit appeals to the Board of Veterans' Appeals (BVA) with representation by our experienced staff at our national Appeals Office collocated with the BVA. PVA perennially maintains an enviable record of favorable resolutions by BVA with minimal denials, we believe as a result of comprehensive review and careful preparation for BVA consideration. In fact, in a recent BVA decision, the Board stated, "Here, the veteran is represented by a highly respected national Veterans Service Organization which is well versed in veterans' law." Approximately 40 percent of appeals represented by PVA are remanded. When appeals are remanded to the Appeals Management Center, we continue representation through our network of National Service Officers who maintain local contact with the appellant and assist with the submission of further evidence or other responses.

As Congress attempts to address concerns related to the claims backlog, specifically as it relates to what occurs in the appeals process, it is important to understand factors contributing to the current situation at the BVA. The BVA anticipates that by the end of FY 2007, the Board will enter approximately 45,000 decisions. Currently, the average docket date for decisions entered by the Board is June 2005. Meanwhile, approximately one third of appeals are currently remanded. According to the VA's own studies, a significant number of BVA remands were required because the Agency of Original Jurisdiction—usually the Regional Office—failed to fully and/or properly develop or decide the claim in accordance with existing instructions and directives of the Department. This factor alone should be examined and addressed sooner rather than later as we believe that no meaningful reduction in the claims backlog can be achieved without paying attention to this problem.

We believe that changes introduced into the claims process by enactment of the Veterans Claims Assistance Act (VCAA) and a series of precedent interpretations of the Act entered by the U.S. Court of Appeals for Veterans Claims and the U.S. Court of Appeals for the Federal Circuit resulted in unanticipated numbers of appeals remanded by BVA for compliance with the new law and new interpretations, peaking at a remand rate of more than 50 percent.

The VA realized then that Regional Offices were doing a poor job on remands, so the BVA began doing its own claims development without regulations permitting it. The VA then changed the regulations to allow this practice. The regulations were subsequently found not valid in *Disabled American Veterans v. Secretary of Veterans Affairs,* 327 F.3d 1339 (Fed. Cir. 2003). The Court held that the BVA cannot use evidence it develops unless the veteran waives the right to have the evidence reviewed by the RO in the first instance. In response to this decision, the VA created the AMC to handle the remands in Washington, DC, where they could do the same evidence development but not compete with new claims, and hopefully resolve these claims faster and better. The AMC was then staffed and resourced to handle the historical average number of BVA remands—about 12,000 per year.

As a result of the unanticipated increase in the number of remands—well in excess of the 12,000 per year estimate—the AMC was quickly overwhelmed. It then formed three satellite offices located in St. Petersburg, Florida; Cleveland, Ohio; and Huntington, West Virginia, to attempt to handle the volume of cases. The AMC inventory is now at the level originally planned. The VA's data indicates that AMC review on average is completed in less time than at ROs and results in higher allowance rates. PVA's experience at the AMC was initially favorable. We experienced approximately a 30 percent allowance rate on remand at AMC in the early years. Upon request, we were also able to solicit the cooperation of AMC employees and resolve especially complex cases or cases for people with terminal illness or financial hardship.

In addition to and apart from the aforementioned problems identified at the Agency of Original Jurisdiction, significant customer service challenges for the VA are presented and always will be presented in the appeals process. Foremost in the minds of appellants, PVA and the VA is the goal of having appeals resolved in a timely and accurate manner. The Veterans Benefits Administration (VBA) and BVA have been stressing to their employees the need to quickly adjudicate the claims and appeals in order to reduce the backlog. However, as shown by BVA's "average docket," appeals remain pending before the BVA for an average of 2 years. All agree with VA's stated goal of improving the timeliness of this process. Unfortunately, timeliness competes with accuracy and quantity competes with quality. Confirmation that efforts to process appeals faster is winning over efforts to produce quality decisions is the consistently high error rate found in BVA decisions on appeal to the U.S. Court of Appeals for Veterans Claims.

In fairness to the VA, judicial review does require the VA to conform to new precedential decisions. Appellants at the Court will, as they must, seek the most favorable interpretation of laws and regulations presented in their appeals. Such advocacy is obviously consistent with the statutory scheme controlling the adjudication of veterans benefit claims.

Merely creating templates to comply with mandates established in Title 38 USC is not enough and results in necessary remands because the claimants do not receive the information they need and adjudicators have a tendency to focus less on the facts and law involved in individual claims. With VA's data indicating that nearly a third of remands are required because of the inaccuracies in the initial determination, and with the recent revelations of the disparities between the results of adjudications depending on the location of the RO, the veteran community is reasonably skeptical of an RO decision. When a veteran receives a letter that contains an inaccurate statement, whether or not the inaccuracy would have an impact on the decision, the veteran loses confidence in the ability of the RO to fairly and accurately decide his or her claim. This lack of confidence has had the natural effect of increasing the number of appeals filed. Veterans hope that Washington staff will provide a more accurate decision.

With the emphasis placed on the timeliness of the adjudications in support of the goal of reducing the backlog of claims, there exists an environment at VA that favors speed and numbers of decisions over accuracy. We continue to receive candid reports from VA employees expressing their desire to perform more careful reviews, who feel compelled to maintain their production goals for the quantity of work. The degree of accuracy and consistency impacts the number of appeals. With the systems used by VA to credit employees for work performed, there exists an immediate benefit to the employee to maintain a high quantity of work. Maintaining the quality of work is achieved primarily through sampling by the Compensation and Pen-

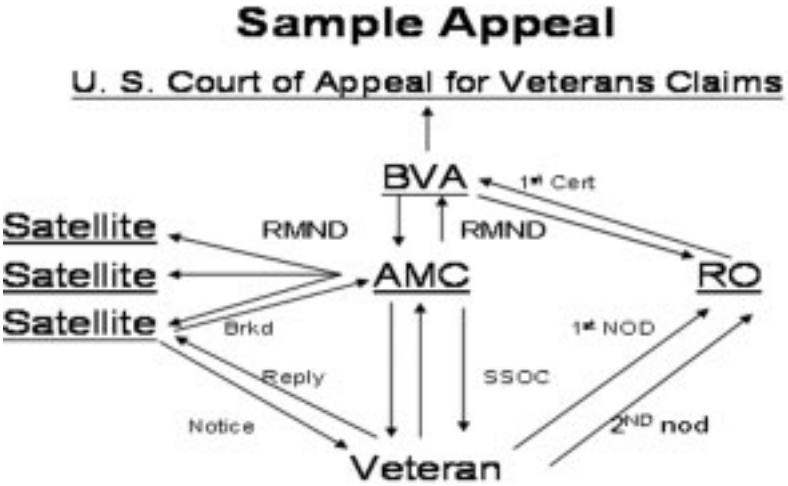
sion Service, which does not share the same impact on the rating process or the employees. Simply put, there is no substitute for doing the work correctly the first time.

PVA also has concerns about the piecemeal process of appeals decisions. With the creation of the AMC, it is not uncommon for a veteran to have issues simultaneously pending before a Regional Office, the AMC, the BVA and possibly in the Court. Since VA remains wedded to a paper claim file for most issues, this requires VA to frequently ship files around the country as different offices compete over a single record to adjudicate the issues pending within their own jurisdiction. Maintaining control of the claim files is challenging and shipping costs are expensive.

An appeal often presents multiple issues, such as service connection for multiple disabilities, the evaluation of disabilities and perhaps an appeal for a resulting inability to maintain employment. A single BVA decision will often contain a grant of an issue, denial of an issue and a remand of an issue. In this circumstance, the file will be transferred to the AMC where the grant of a benefit by the BVA will be implemented by a rating decision and then the AMC will proceed to comply with the BVA remand instructions. The decision to have the AMC act first by implementing the benefit granted by BVA has improved the timeliness of these awards compared to past procedures. By design, the AMC does not accept jurisdiction on new appeals, only those matters remanded by the BVA. Therefore, if a veteran disagrees with a rating entered by the AMC, a Notice of Disagreement must be filed at the RO and the new appeal must wait without action until after the return of the file.

At times, resolution of one issue may affect another. If the BVA recognizes this potential, it may choose to simultaneously remand multiples issues. As with all decisions of the Board involving judgment, the BVA may or may not agree in a given case and may deny one issue to the detriment of an appellant and decline jurisdiction on a related issue. Our experience at the BVA leads us to conclude that the BVA as a body is inconsistent in its response to pleadings that a decision on a matter before them should be deferred until after a separate issue is resolved. In the effort to reduce the backlog, we perceive reluctance on the BVA's part to entertain additional issues that would introduce further delay.

Ultimately, splitting jurisdiction between several offices that compete over a single record precludes a comprehensive review and introduces additional delay. To best represent how complex and complicated this can be, the following chart (developed by PVA appeals staff) reflects the situation a single veteran may face as he or she navigates the appeals process.



With all of these considerations in mind, we would like to make a few recommendations and attempt to explain their potential impacts. We believe that VBA must accelerate the progress toward an electronic claims record system. As long as VA continues to use a paper file shipped around the country, the claims and appeals process will be done in an expensive and antiquated manner. As demonstrated by the Veterans Health Administration's outstanding electronic medical record, similar

gains in access to records can be realized in the claims and appeals process, as well as significant cost savings as VBA and the BVA move toward a "Virtual VA." We urge Congress to accelerate funding of VA's transition to an electronic claims record.

PVA also believes that centralized training better prepares ratings specialists at all levels. Training of rating specialists was historically conducted at the local level by the more senior staff. The VA now provides centralized training at its Veterans Benefits Academy located in Baltimore, Maryland, and via the VA intranet. The Compensation and Pension Service also issues Decision Assessment Documents (DAD) in response to Court precedent opinions to inform staff of these decisions. The VA should be lauded for these actions. Furthermore, as we have called for in *The Independent Budget,* co-authored by PVA, AMVETS, Disabled American Veterans, and the Veterans of Foreign Wars, Congress should fully fund VA's training initiatives. Improved and continued centralized training should help reduce inconsistencies and disparities between Regional Offices and should improve consumer confidence.

The VA and VSOs can also explore opportunities to share resources for training. Moreover, Congress should authorize VA to provide greater access for VSOs to VA's training modules. For example, PVA has prepared a Guide for Special Monthly Compensation that has been adopted for rater training placed on VA's intranet. The PVA Guide has also been distributed via BVA Special Monthly Compensation (SMC) training. PVA staff also interacts with other VSOs at their training events.

Another point that *The Independent Budget* has advocated for is significant increases in staffing levels in the VBA at all levels. If the FY 2008 Military Construction and Veterans' Affairs appropriations bill is enacted prior to the start of the new Fiscal Year on October 1 (a prospect that seems to be getting dimmer every day), the VA will be provided much needed funding to add more than 1000 new full-time equivalent employees (FTEE) to VBA.

However, it is important to realize that decisions made on appeal require greater expertise and often involve more complex questions of medicine and law. As such, it takes years to train a competent ratings specialist. Trainees should simply not be conducting appellate review due to the complexity of these decisions. Increases in staffing today should be seen as an investment in the future. In the end, staffing issues do not have a quick fix.

Mr. Chairman and Subcommittee Members, I would like to thank you once again for allowing PVA to present its views on the Board of Veterans' Appeals and the Appeals Management Center. We look forward to working with you to continue to improve the claims process at all levels. I would be happy to answer any questions that you might have.

Prepared Statement of Steve Smithson, Deputy Director, Veterans Affairs and Rehabilitation Commission, American Legion

Mr. Chairman and Members of the Subcommittee:

Thank you for this opportunity to present The American Legion's views on the Board of Veterans' Appeals (Board or BVA) and the Appeals Management Center (AMC). The American Legion commends the Subcommittee for holding a hearing to discuss these two important parts of the Department of Veterans Affairs (VA) claims adjudication system.

Board of Veterans' Appeals

The BVA is a separate entity within VA. Its responsibility is to render a final decision on the propriety of regional office decisions. If the BVA determines that a final decision cannot be made on a case due to an inadequate record it has the authority to remand the case back to the agency of original jurisdiction, which now includes the AMC, for additional development and readjudication.

As of September 8, 2007, there were more than 160,000 cases in appellate status still pending in VA's 57 regional offices, with more than 142,000 requiring some type of further adjudicative action. In September of 2006 there were approximately 9,000 fewer pending appeals. Based on statistics produced by the VA for the first 11 months of FY 2007, once a substantive appeal has been filed it takes the VA regional offices an average of 527 days to forward the case to the BVA. In view of the increasing number of new appeals coming into the system, it is painfully obvious that the level of dissatisfaction among claimants seeking VA disability benefits is substantial and growing.

At the end of FY 2006, the BVA had 457 employees, including 56 veteran law judges. Even though the Board's current average processing time is 274 days, up

about 22 days from FY 2006, we do not believe there is an urgent or overriding need for any substantial increase in staffing. The amount of time it is taking to process an appeal should not be the most important factor in decisions about the adequacy of the Board's staffing. The American Legion is more concerned that the Board's decisions are fair and proper.

Since 2004 the BVA has concentrated much of its effort on eliminating avoidable remands. It is clear that the Board would like to issue more final decisions in order to reduce its backlog. This effort has resulted in a significant reduction in remands (from 56.9 percent in FY 2004 to 32 percent in FY 2006). It has also resulted in a significant increase in denials (from 24.2 percent in FY 2004 to 46.3 percent in FY 2006), with only a slight increase in allowances (17.1 percent in FY 2004 to 19.3 percent in FY 2006). It is the opinion of The American Legion, based on our review of American Legion represented appeals denied by the BVA, that in its zeal to avoid remands, the BVA has rendered erroneous or premature decisions in cases where benefits should have been granted or where the case should have been remanded. In the past 8 years the National Veterans Legal Services Program (NVLSP), consultant to The American Legion, has appealed approximately 500 American Legion BVA denials to the U.S. Court of Appeals for Veterans Claims (CAVC) and has won a remand or reversal in over 90 percent of these appeals. Further, according to the CAVC Web site, the combined remand plus reversal rate for appeals decided by the Court on the merits was just over 76 percent. This rate mirrors the remand plus reversal rate achieved by the volunteer attorneys who take cases through the Veterans Consortium Pro Bono Program. A 90 percent (or even a 76 percent) reversal/remand rate is unacceptable for any adjudicative system, but this extraordinarily high remand/reversal rate is especially galling for an adjudicative system that is required by statute to be so veteran friendly that the benefit of the doubt is given to claimants. Clearly, such a high remand/reversal rate is a direct reflection of substandard BVA decisions.

There are more than 31,000 appeals currently pending at the BVA. In FY 2006, the BVA issued 39,076 decisions (95 percent of these decisions involved compensation claims). In the first 11 months of FY 2007, the BVA issued more than 37,000 decisions and, of these, only 41 percent of the regional offices' decisions have been affirmed or upheld by the BVA. The Board overturned the regional offices' decisions in 21 percent of the cases and remanded 35 percent of the appeals. Most remands went to the AMC for additional development and readjudication. The BVA remand, allowance and denial rate for the first 11 months of FY 2007 is similar to that of FY 2006. A logical conclusion that one reaches after reviewing this data is that the quality of regional office adjudication continues to be totally unacceptable and the BVA continues to issue many substandard decisions.

It should be noted that the Board's work product is a direct reflection of the adjudications produced by the VA regional offices. The BVA cannot be reviewed in a vacuum. Most of the problems with the BVA can only be corrected if the quality of adjudications in the VA regional offices is improved. The poor quality of VA regional office adjudications adversely impacts the work of the BVA. The American Legion has long maintained that such poor quality regional office work is a direct result of VA management placing a higher value on the *quantity* of adjudications produced by the VA regional offices rather than the *quality* of that work.

This emphasis on production continues to be a driving force in the VA regional office, often taking priority over such things as training and quality assurance. Performance standards of adjudicators and rating specialists are focused on productivity as measured by work credits, known as "End Products". Both veteran service representatives (VSRs) and rating veteran service representatives (RVSRs) have minimum national productivity requirements that must be met each day. The American Legion has also learned that some VA regional offices also set their own production standards that require VA adjudicators to produce more final decisions over and above the national requirement.

Unfortunately, the end product work measurement system essentially pits the interests of the claimant against the needs of VA managers. The conflict is created because the regional office managers seeking promotion and bonuses have a vested interest in adjudicating as many claims as possible in the shortest amount of time. This creates a built-in incentive to take shortcuts so that the end product can be taken. The system, in effect, rewards regional offices for the gross amount of work they report, not whether the work is done accurately or correctly. Often, the emphasis on production results in many claims being prematurely adjudicated. These problems are caused (in part) by not taking the time to adequately develop the claim, not taking the time to identify all relevant issues and claims, and not taking the time to order a new VA examination when the previous VA examination is obviously

inadequate. Such errors are often overshadowed by the desire of VA managers to claim quick end product credit.

The emphasis on production causes two bad results. First, because of shoddy regional office work there are so many cases for the BVA to remand that the Board, pressured to reduce its remand rate, all too often denies claims that should be remanded. This is reflected by the very high remand/reversal rate at the CAVC. Second, in many instances, the Board has no choice but to remand prematurely adjudicated claims. The high BVA remand rate has resulted in a growing backlog at the AMC. The BVA combined remand and reversal rate (56 percent) through August of 2007 is arguably a direct reflection of the greater emphasis placed on production over training and quality assurance by the VA regional offices.

Veterans Benefits Administration (VBA) management has been reluctant to establish a rigorous quality assurance program to avoid exposing the longstanding history of the manipulation of workload data and policies that contribute to poor quality decisionmaking and the high volume of appeals. VBA's quality-related problems and the fact that little or no action is being taken to prevent or discourage the taking of premature End Products have been longstanding issues for The American Legion. The current work measurement system, and corresponding performance standards, are used to promote bureaucratic interests of regional office management and VBA rather than protecting and advancing the rights of veterans. The end product work measurement system, as managed by the VA, does not encourage regional office managers to ensure that adjudicators do the "right thing" for veterans the first time. For example, denying a claim three or four times in the course of a year before granting the benefit sought allows for a total of five end product work credits to be counted for this one case, rather than promptly granting the benefit and taking only one work credit.

In the view of The American Legion, the need for a substantial change in VBA's work measurement system is long overdue. A more accurate work measurement system would help to ensure better service to veterans. Ultimately, this would require the establishment of a work measurement system that does not allow work credit to be taken until the decision in the claim becomes final, meaning that no further action is permitted by statute whether because the claimant has failed to initiate a timely appeal or because the BVA rendered a final decision. We are pleased that recently introduced legislation (H.R. 3047) would mandate such overdue changes to VA's work credit system. We are hopeful that, if enacted, this legislation, which would change the underlying incentive by rewarding quality of work rather than quantity, will increase the number of accurate decisions as well as claimant satisfaction and, in doing so, reduce the overall number of appeals.

Appeals Management Center

Frustrated with the large number of underdeveloped appeals received from the regional offices and the inordinate amount of time it was taking for remands to be worked upon by the regional offices and returned to the Board, the BVA established a development unit, pursuant to a newly written regulation (38 C.F.R. § 19.9(a)(2)) on February 25, 2002. However, as a result of a successful legal challenge to the establishment of the BVA development unit VBA dismantled the BVA development unit and the VA then established the AMC on July 23, 2003. The purpose of the AMC is to provide more expeditious action on remands and also to relieve the regional offices of the workload burden associated with remands.

The AMC was established to function as a national regional office that would handle BVA remands. It has been tasked to undertake the additional development of evidence specified by the Board and then readjudicate the claim. Unfortunately the AMC office, with a staff of 94 FTE, has been overwhelmed by an unmanageable backlog of remands since it first opened its doors. Initially, 16,484 cases were inherited from the BVA development unit and, currently, the AMC has more than 18,000 remands under development.

While the AMC is an admirable attempt by VBA to improve service to veterans, it does nothing to address the problems underlying the continued rise in the number of appeals and remands by the BVA. In our view, the very necessity of the AMC's existence begs the question—why hasn't VBA mandated the regional offices to correct their own mistakes?

The AMC is now responsible for correcting errors that the regional offices were unwilling or unable to do. The AMC, however, has no authority to prevent the same type of error, which prompted the appeal and remand, from occurring again. Since production work on new claims was the highest priority and because the VA regional offices did not receive work credit for work caused by a BVA remand, many regional offices placed a low priority in developing and adjudicating BVA remands. This resulted in many cases remanded by the BVA not being adjudicated for several

years after the case was remanded. Now, because there is an AMC, there is little incentive for the regional offices to improve the quality of their adjudications. Most prematurely denied claims are being remanded to the AMC. Therefore, when a regional office denies a claim incorrectly or prematurely it does not have to correct its error because the case will be remanded to the AMC. The American Legion asks that Congress take action to require that the VA regional offices are held accountable for the poor quality of initial decisionmaking.

The AMC's apparent inability to bring its extremely large backlog under control since its creation in 2003 has been a major concern of The American Legion. As previously stated, the AMC currently has more than 18,000 remands pending development and adjudication. In August of this year, the BVA remanded 1,710 cases to the AMC while the AMC only returned 639 remands to the BVA, leaving the AMC with a deficit of 1,071 cases for the month. Moreover, 21 percent of the 13,082 appeals remanded by the BVA in the first 11 months of FY 2007 were prior remands as were 30 percent of the appeals allowed by the BVA. This data tends to reflect a large percentage (51 percent) of cases that were not properly developed or adjudicated by the AMC. Additionally, in July of this year the AMC started brokering ready-to-rate cases to designated regional offices. As of September 24, 2007, there were 199 AMC remands at the Huntington Regional Office and 75 at the Seattle Regional Office with additional brokering expected to take place each month. Unfortunately, this is another example of the AMC, as it is currently structured, not being able to properly handle its workload. It is clear that the AMC is under funded. The Congress and the VA should now take prompt action either to eliminate the AMC or to properly fund its work.

Conclusion

The best way to help veteran claimants is to fix the entire VA claims adjudication system. Piecemeal solutions do not work and should be avoided. The VA work measurement system should be changed so that VA regional offices are rewarded for good work and suffer a penalty when consistent bad decisions are made. Managers, attorneys and the law judges at the BVA should be rewarded for prompt careful work and they should also be penalized when they make bad decisions. The AMC should be adequately funded or closed. American veterans seeking VA disability benefits deserve better treatment than what they are currently getting from the VA.

Thank you again, Mr. Chairman, for allowing The American Legion to present comments on these important matters. As always, The American Legion welcomes the opportunity to work closely with you and your colleagues to reach solutions to the problems discussed here today that are in the best interest of America's veterans and their families.

Prepared Statement of Adrian Atizado,
Assistant National Legislative Director, Disabled American Veterans

Mr. Chairman and Members of the Subcommittee:

On behalf of the 1.3 million members of the Disabled American Veterans (DAV), I am pleased to present our views on the functioning and performance of the appellate operations of the United States Department of Veterans Affairs (VA), as carried out by its Board of Veterans' Appeals (BVA or Board), and Appeals Management Center (AMC). The members of the DAV are made up of service-connected disabled veterans and along with family members in the Auxiliary, have a special interest in the subject of today's oversight hearing.

The effective administration of appellate review of claims decisions is essential to discharging VA's mission of caring for our Nation's veterans. Approximately 96 percent of BVA's workload involves disability compensation and pension claims. The oversight this Subcommittee provides is necessary to guarantee veterans receive the benefits to which they are entitled by law and to impose the accountability for results and efficiency that our citizens rightfully demand. Your vigilant oversight of performance, and your watchfulness of execution of the laws, creates an incentive for better performance by VA.

The law governing veterans' benefits, as it is generally, is not an exact science. Adjudication of veterans' claims for VA benefits and services require the intervention of human judgment. Such judgment is not infallible, and we therefore view the right to appeal as an important element of fairness and necessary to safeguard against injustices that result from human error. Because appellate review is so essential to ensuring justice in an unavoidably imperfect adjudication system, the

proper functioning of appellate processes is of major importance, especially where the rights and benefits of our veterans are involved.

As a statutory board, BVA was created by consolidating and centralizing the appellate board in Washington, DC, and with a clearer sense of direction, the problems of decentralization, lack of uniformity, and the lack of finality were addressed. Since its inception, BVA has operated separate and independent from the other elements of VA. While there have been some changes in its configuration since 1933, BVA has retained its basic concept and mission.

BVA's mission today is still to make the final decision on behalf of the VA Secretary in claims for benefits. Section 7104 of Title 38, United States Code, provides: "All questions in a matter which ... is subject to a decision by the Secretary shall be subject to one review on appeal to the Secretary. Final decisions on such appeals shall be made by the Board. "

Although BVA generally makes the final decision in an appeal, the appellate process begins with the VA field office responsible for the appealed decision, commonly referred to as the agency of original jurisdiction. Some appealed decisions are resolved by the agency of original jurisdiction, which alleviates the need for a final decision by BVA. Other appeals that have been transferred to BVA may be sent back, "remanded," to the agency of original jurisdiction to cure some procedural omission or record defect, or may be favorably resolved. Up to 50 percent of the appealed cases are resolved by the agencies of original jurisdiction and never reach the Board. About 75 percent of the remanded cases are returned to the Board for a final decision.

Appellate Process

A veteran or other claimant initiates an appeal by filing a "notice of disagreement" with the agency of original jurisdiction. The agency of original jurisdiction may then take such additional development or review action as it deems proper. If such action does not resolve the disagreement, the agency of original jurisdiction issues to the appellant a "statement of the case" that contains a summary of the pertinent evidence, a citation of the pertinent legal authorities along with an explanation of their effect, and an explanation of the reasons for the decision on each issue. To complete, or "perfect," the appeal, the appellant must then file with the agency of original jurisdiction a "substantive appeal," a written statement specifying the benefit or benefits sought and the basis of the appellant's belief that he or she is legally entitled to the benefit or benefits. Upon receipt of the substantive appeal, VA enters the case on the BVA docket. The BVA docket is a list of cases perfected for appellate review compiled in chronological order of when the substantive appeal was received. The Board receives these cases for review by their order on the docket, although a case may be advanced on the docket for demonstrated hardship or other good cause. The Board must afford each appellant an opportunity for a hearing before deciding his or her appeal. The hearing may be held before the BVA at its principal office or at a VA facility located within the area served by appellant's VA regional office. The Board may enter a decision that orders the granting of appropriate relief, denying relief, or remanding the appeal for further action by the agency of original jurisdiction.

Claimants for veterans' benefits who believe BVA made factual or legal errors in deciding their claims may appeal to the United States Court of Appeals for Veterans Claims (CAVC or Court). The Court may affirm or reverse the BVA decision, or remand for further action. The landmark legislation enacted in 1988 that subjected BVA decisions to the scrutiny of an independent court has necessitated positive reforms in BVA decisionmaking. Because the Board's decisions must be justified with an explanation of the factual findings and legal conclusions and because VA must defend its decisions in court, denials that go against the weight of the evidence or law have declined. The Board allows and remands substantially higher percentages of appeals than it did before judicial review. Prior to judicial review, BVA allowed or remanded only about 20 percent of appeals. Today that number is approximately 56 percent.

During 2006, 3,729 claimants appealed to CAVC. The Court decided 2,135 cases based on the merits of each case, with a median processing time from filing of the appeal to disposition of 351 days. Of that total, 1,365 cases, or 64 percent, were either reversed/vacated and remanded or remanded because of some substantive error or procedural defect. This reflects a high error rate among those BVA decisions appealed to the Court.

The DAV's judicial appeals representatives complain that the Board, with increasing frequency, is deviating from the Court's orders reversing and/or remanding cases with specific instructions. The Board's failure to adhere to the Court's orders is blatantly unlawful. Claimants have no immediate means to remedy the Board's unlaw-

ful action. For example, in one recent case the Secretary and the veteran appellant agreed that the Board had committed an error which required remand for a new Board decision and that the record was sufficient for the Board to make that decision. The Court granted a joint motion for remand that directed the Board to decide the appeal based on the existing record. The Board ignored that order and remanded to the regional office with an instruction to conduct an examination. The Court has held that such remand orders by the Board are not final decisions and therefore not appealable to the Court. The claimant in that case was consigned to the VA adjudication hamster wheel for an additional period of months or years. The Board's defiance of the Court's mandates breaks down the order and discipline imperative in appellate systems where inferior tribunals are legally bound to adhere to the orders of superior tribunals.

During Fiscal Year (FY) 2006, 101,240 new notices of disagreement were received by VA, 46,076 appeals were perfected and added to BVA's docket, 41,802 cases were physically transferred from agencies of original jurisdiction to BVA, and the Board decided 39,076 cases. The Board began 2006 with 37,539 cases pending before it and ended the year with 40,265 cases pending. Accordingly, the number of new appeals added to the Board's docket during the year exceeded the number of cases it decided by 7,000, and the number of new appeals added to the Board's docket exceeded the number of cases transferred to the Board for a decision by 4,274. The Board decided 2,726 fewer cases than it received from field offices.

Processing Time

At the end of FY 2006, there were more than 164,000 cases in field offices in various stages of the appellate process, including the 21,229 on remand. Some of these appeals will be resolved at the field office level, but about three-fourths of them will come before the Board.

During FY 2006, the average time for resolving an appeal, from the filing of the notice of disagreement to the date of the decision was 971 days. Of this total, 719 days was the average time an appeal was pending in the field office, from the notice of disagreement to the transfer of the case to BVA, with an average of 252 days from the date of receipt of the case at BVA to the date of the decision.

For FY 2006, the average number of days an appeal was pending in the New York City VA regional office before being transferred to BVA was 1,513 days, with 1,213 of those days representing the time after the appeal was perfected and the case was ready for transfer. Corresponding average days in the St. Petersburg, Florida regional office was 1,014 and 645; Chicago, Illinois was 865 and 613 days; 755 and 542 days in Cleveland, Ohio; 745 and 478 days in Denver, Colorado; and 706 and 478 days in Reno, Nevada. For a New York case, the average total processing time for an appeal at BVA in FY 2006 was 209 for a total of 1,722 days, almost 4 years and 9 months. Correspondingly, for a case in St. Petersburg the average total number of days to a BVA decision was 1,254 or 3 years and 5 months, nearly 3 years in Chicago (1,093 days) and Denver (1,050 days), and over 2½ years in Cleveland (982 days) and Reno (935 days). Eleven VA regional offices exceeded 1,000 days for the average time an appeal was pending at the field office (New York; Seattle; San Diego; Los Angeles; Providence; Houston; Honolulu; Milwaukee; Atlanta; Des Moines; St. Petersburg).

From the start of this Fiscal Year through August 2007, the average total days for cases pending in the field was 784 days and the average time at BVA was 274 days. Of course, for those cases remanded, the total processing time is considerably longer. An additional 140 days were added to the total processing time of appeals for the time the case spent at BVA the second time following the remand, and this does not include the number of days the case was on remand at the field office.

In FY 2006, an additional 115 days were added to the total processing time of appeals for the time the case spent at BVA the second time following the remand not including the number of days the case was on remand at the field office. During FY 2006, 13,812 cases were returned to the Board following remands. As noted, there were 21,229 cases on remand at the end of 2006. Of the 39,076 cases decided by BVA in FY 2006, approximately 37 percent had been previously remanded. With these long processing times, far too many disabled veterans die before their appeals can be decided. Three obvious conclusions follow from these numbers: (1) most of the delay in these unreasonably protracted appeals processing times is at the field office level, (2) far too many cases must be remanded more than once, and (3) multiple remands add substantially to the workload of BVA and the regional office.

Accuracy

From the beginning of FY 2007 to date, the Board allowed 21 percent of the 37,120 cases it decided. Approximately 31 percent of those allowed cases had been previously remanded. In addition, the Board remanded 35 percent of the cases it reviewed and of those remanded cases, 21 percent had already been previously remanded, suggesting that the field office did not fulfill the Board's instructions in the remand order. Together, the allowed and remanded cases represented 56 percent of the Board's total case dispositions. In addition to noting the high percentage of cases remanded multiple times, two conclusions can be drawn from these percentages: within these appealed cases, (1) agencies of original jurisdiction have denied many meritorious claims, and (2) agencies of original jurisdiction have denied many cases without proper record development.

Space Issues

BVA experiencing some shortage of storage space for claims files because of the large volume of appeals, the President's FY 2008 budget request for 468 fulltime employees (FTE) and indications from this Subcommittee to increase BVA will create a more pronounced need for additional space. Considerable time and effort was invested toward the Board's planned relocation to a more suitable office space in FY 2007. Unfortunately, funding for this necessary move was withdrawn and the move has been permanently delayed. If future backlogs and delays in appellate processing are to be avoided, BVA must have the additional resources necessary to meet this increasing workload.

New Initiative

Timeliness and accuracy of claims for veterans benefits and services remains a concern for the DAV. A proposed initiative was announced this year to address the timeliness of claims and appeals. The Expedited Claims Adjudication (ECA) initiative as proposed would offer an expedited process to selected claimants by requiring a waiver of certain time periods normally afforded in the claims and appeals process. While we agree that the timely processing of all claims and appeals must be improved, this initiative is only one method to achieve the goals it has outlined. We must remain cautious that any such agreement or waiver of protection afforded to the veteran by law should be an option and not a requirement, and not be utilized to discriminate or disallow the claim or appeal from proceeding or returning to the normal claims process. Moreover, we do not concur with the proposed statutory changes to 38 USC § 7105(b)(1), 7104, 7101, and 7107(b) as the goal of speeding up the process should not be accomplished by depriving appellants of due process. We believe that the three core elements that must be allowed are staffing levels, adequate training, and accountability.

Appeals Management Center

In August 2001, VA proposed to amend the Board's regulations to enable the Board to perform record development itself and make a decision on that evidence rather than remand the case to the agency of original jurisdiction for these purposes. For several reasons related to unfairness and inefficiency, the DAV urged VA not to issue a final rule to authorize this practice. We also noted that such a rule would be unlawful because it would deprive claimants of the statutory right to have a decision by VA and one administrative appeal from that decision.

VA brushed aside our objections and recommendations to utilize Veterans Benefits Administration (VBA) personnel rather than the BVA and issued a final rule for this purpose in January 2002. BVA created its Evidence Development Unit, which began operations in February 2002. The DAV, joined by three other organizations, challenged this rule and in its May 1, 2003, decision, the United States Court of Appeals for the Federal Circuit invalidated the rule as unlawful. As a result, VA created a special VBA unit, the AMC, to perform remand functions.

The AMC develops and decides approximately 82 percent of the BVA remands. The issues involved in the other 8 percent are more appropriately handled by the field offices. Although the average time a case was in remand status during FY 2006 was 16 months because a portion of the cases were old ones remanded to field offices, the portion of the remanded cases that were developed and decided by the AMC were on remand an average of approximately 336 days. The most recent data available to DAV for FY 2007 indicates the AMC currently completes work on an average of 710 cases a month and 18,622 cases are assigned to AMC.

The initial bulk transfer of approximately 9,000 cases from the Board to the AMC in the first quarter of FY 2004 were cases in which further development was pending at the Board. Of course, the AMC had both the responsibility to develop and adjudicate these cases. In the beginning when the AMC was first organized, it had

to cope with new processes and adjudicators, and it was understandably not up to full efficiency. As a consequence, cases began to back up.

Because the volume of work at the AMC was higher than expected, VBA developed a plan in December 2004 to have three VA regional offices do a portion of the remands to reduce the backlog. These offices are located in Huntington, West Virginia; St. Petersburg, Florida; and Cleveland, Ohio. Initially, the plan was to broker already developed cases to these regional offices to adjudicate, and authorize awards as indicated. However, the Huntington and St. Petersburg offices found that some of the cases they received from the AMC were not actually ready to adjudicate, and that these offices began to undertake development also.

Out of the three regional offices, only Huntington remains a receiving station for brokered cases from the AMC, in addition to the Seattle VA regional office. According to the AMC, 300 cases a month are sent to the AMC teams at the two regional offices, significantly less than the 1,300 cases to three regional offices in 2005.

Our DAV representatives at BVA observed that some of the earlier cases returned to the Board from the AMC were not developed in compliance with the remand orders. However, with AMC employees gaining experience, the quality of development has improved. The AMC is viewed as an improvement over the prior procedure in which all cases were remanded to agencies of original jurisdiction because cases are more strictly controlled and not left to languish in field offices for years as too often happened before. Our representatives at the AMC also report that AMC adjudicators are granting the benefits sought in many of these appeals.

When the BVA allows an appeal, it returns the case to the AMC rather than the agency of original jurisdiction to effectuate the award of benefits. The case often must go to the AMC because the appeal also involves a remanded issue. A major and continuing complaint is the delay in the award of benefits on the allowed portion of the appeal. While benefits sought may be granted, the average time from the decision to issuance of the award to the veteran has doubled from an average of 3 months in 2005 to an average of 6 months. Even where the case involves no remanded issue, the case is sent from BVA to the AMC for the award of benefits resulting in unnecessary delays.

In 2005, VBA had 134 FTE devoted to the AMC and its three outstations: 87 FTE in the AMC; 25 FTE in St. Petersburg; 8 FTE in Huntington, and 14 FTE in Cleveland. According to the AMC, there are now 99 in the AMC, and no FTE devoted to the two resource centers in Huntington and Seattle.

Focus on the BVA and the AMC alone does not present a complete picture of the effectiveness of VA's appellate processes. The timeliness and propriety of actions on appeals by agencies of original jurisdiction in preparing the case for BVA review and in completing remand actions after BVA review account for much of the overall appellate processing time and necessity to rework the case. The available data show the error rates in appealed cases are high and that the process takes an inexcusably long time, thereby delaying disability and other benefits for many veterans with meritorious claims and immediate needs. The problem of appeals languishing in regional offices for years is not a new one. The responsible VBA officials need to take more decisive action to correct this problem. Board officials need to take the necessary steps to reduce error rates in BVA decisions and to ensure binding court mandates are carried out. With recent increases in the appellate caseloads and no corresponding increase in staffing, timeliness at BVA and the AMC is likely to suffer even more. Congress needs to address BVA space and staffing more seriously.

In addition, DAV and VA are unaware of what the effects of the provision in Public Law 109–461, which allows attorneys and agents to charge fees to veterans, will be on the Board, the AMC, and the timeliness and accuracy of the appellate process.

We appreciate the Subcommittee's interest in these issues, and we appreciate the opportunity to provide you with the DAV's views. We hope our views will be helpful to the Subcommittee.

Prepared Statement of Eric A. Hilleman, Deputy Director, National Legislative Service, Veterans of Foreign Wars of the United States

Mr. Chairman and Members of the Subcommittee:

On behalf of the 2.4 million members of the Veterans of Foreign Wars of the U.S. (VFW) and our Auxiliaries, I would like to thank you for your invitation to testify at today's important hearing on the "Board of Veterans' Appeals (BVA) Adjudication process and the Appeals Management Center (AMC)." Let me begin by stating that the VFW is committed to an effective and efficient claims process, with a just and

accessible appeals process. We hope to be a partner in seeking actionable solutions to the challenges that the VA faces.

The VFW's genesis is with the group of veterans who returned from the U.S. campaigns on Cuba and the Philippines in 1898 and 1899. These veterans organized to care for veterans who endured the hardships of the battlefield, so that our Nation may never forget their sacrifice. All Veterans Service Organizations (VSOs) have a similar goal, to ensure the American people, through their government continue to recognize and acknowledge their sacred obligation to those citizens who sacrificed and risked life and limb for their defense. The VFW believes this agreement does not cease when the uniform lies folded in a drawer.

We must view the Department of Veterans Affairs' claims process through the lens of this social contract. We, and other VSOs, have long served at no cost to our fellow veterans to provide benefits counseling, claims development, outreach, and claims review in VA regional offices, the BVA and the AMC. We, like other VSOs, maintain full time appeals consultants at the BVA and AMC.

The VFW adds value to the claims adjudication process. We serve as a quality assurance tool in reviewing cases. We formulate arguments to further veterans' rights to fair compensation. In addition, we foster a working relationship with the VA with the goal of keeping the best interests of the veteran at the forefront of the decisionmaking process.

The backlog of veterans' claims within Veterans Benefits Administration (VBA) is on the rise. The nearly 640,000 rating and authorization cases are pending and this is 7.4 percent higher than last year and 22½ percent higher than 2 years ago. The challenges VBA faces in addressing the mounting workload are well established. These include the growth of the total claims workload, an ever-increasing complexity of the workload, and the expectations for accurate and timely decisions. The contributing factors of the backlog are also well known.

The rise in the number of claims is a tragic success for the VA. Due to VA's increased outreach efforts and greater access through Vet Centers, more veterans are learning and taking advantage of their earned benefits. Greater numbers of young veterans are returning from combat operations and seeking assistance to reestablish a civilian life. So too, an aging generation of Vietnam, Korean, and WWII veterans are living longer lives than previous generations and seeking care at VA facilities.

With the residual effects of combat and military service on veterans, the complexity of claims is on the rise. The United States Court of Appeals for Veterans Claims has also ruled to improve the fairness and access for veterans seeking compensation for injuries and illness incurred or aggravated while in service. On more than one occasion, rulings of the court have caused VBA to readjudicate thousands of claims in an already overwhelmed claims processing system. Couple this administrative woe with the medical challenge of multiple body-system blast injuries of OIF/OEF veterans and the increasing strain of the effects of illnesses like diabetes and cancer that are synonymous with herbicide exposure in Vietnam and the VA is overwhelmed.

As the backlog of VBA claims swells at every step of the process, the VA weighs the values of quality vs. quantity. The VFW demands both quality and timeliness. The VA has repeatedly testified before Congress to the ills that plague its claims system. Congress has aptly responded with a much-needed increase in funding, yet additional personnel, following decades of inadequate staffing, will not be productive in the near term. The Congress, the VA, and the Veterans' community must examine the system and move forward together.

VBA has sought to address these problems by creating an Appeals Management Center (AMC) here in Washington. The AMC is comprised of a dedicated and committed staff. The AMC addresses the problem of appeal remand development, collecting and requesting additional medical records, exams, and necessary military records. The driving idea behind the AMC was specialization, thus making the AMC a catch basin at the end of the process to improve quality. It has yet to realize its original vision—again the absence of training and difficulties in fully staffing ensures that it will never live up to its potential.

The VFW supported the establishment of the AMC and we continue to work side-by-side with the VBA to improve the appeal process. There are a number of looming concerns beyond the present need for adequate funding, such as personal issues in the areas of training and turnover. VBA employees face a long and complex training regimen and are not easily replaced. VBA's ability to deliver timely and accurate claims is eroding because of operating in crisis management mode, an aging workforce, and a program that seems to be growing relentlessly more complex. Perhaps the answers lie in some combination of technology, more effective and enlightened training, and new employees committed to serve the new generation of veterans. Most troubling to us is the possibility of significant policy change, not necessarily

favorable to veterans, which would further complicate the process and change it into a more adversarial environment.

Despite their best efforts, VBA's production is fraught with a high error rate and growing caseload. It seems clear that VBA lacks a methodology to eliminate or accurately identify the serious errors that plague one out of every seven or eight claims decisions. It also seems obvious that faulty decisionmaking will go unaddressed unless solutions involving a combination of improved information technology, program reform, and strong leadership are implemented with special care not to increase complexity and duplication.

Reform of the system is required. Change is not without precedent in government agencies, but it is only possible when all concerned are truly interested in improvement, and not just in putting a positive spin on the latest bad news. We think that with the support of a strong VBA leadership, the necessary reform is possible. We urge the Congress to further examine this issue, exercise leadership, and build consensus for reform.

Thank you for this opportunity to present our views before this Subcommittee. We welcome questions and look forward to working with interested parties toward viable solutions with the best interests of veterans at heart.

Prepared Statement of Arnold Russo, Director, Appeals Management Center, Veterans Benefits Administration, U.S. Department of Veterans Affairs

Chairman Hall and Members of the Subcommittee.

Thank you for providing me the opportunity to appear before you today to discuss the operations of the Department of Veterans Affairs (VA) Appeals Management Center (AMC).

My statement today will address the remand process and the current AMC workload.

Appeals Management Center

The AMC was created in July 2003, consolidating the responsibility for managing remands from the Board of Veterans' Appeals (BVA) into a single operation where resources and expertise could be concentrated.

The mission of the AMC is to process remands timely and consistently. The AMC has complete authority to develop remands, reach decisions based on additional evidence gathered, and authorize the payment of benefits. If the AMC is unable to grant an appeal in full, the appeal is re-certified to BVA for continuation of the appellate process.

Veterans Benefits Administration (VBA) and BVA have worked closely together to address the root causes of remands. Our joint initiatives have focused on increased coordination of data collection, identification of trends, and training. These joint initiatives have proven to be very successful. The remand rate for FY 2005 was 43 percent. The current remand rate has improved dramatically to 34 percent.

We continue to work to identify the root causes of cases being remanded. There are many reasons why a case may be remanded by BVA for additional action that are beyond the control of the regional office that processed the case, such as a regulatory change or new precedent Court decision. While remands do not necessarily mean that a mistake was made in the processing of the case, we have focused our attention on analyzing those cases where development by the regional office was deficient and the remand could have been avoided.

Deficiencies are tracked nationally and by regional office and are targeted for development of additional guidance and/or increased training. Additionally, VBA this year added "avoidable remand rate" to the performance standards for all regional office directors. Through the end of August 2007, the FY 2007 national avoidable remand rate is under 18 percent, or a 6 percent improvement over last year.

To improve the timeliness of remand processing at the AMC, we have added a technical expert to every team to ensure that any information requested in the remand order was asked for and obtained, or a satisfactory explanation as to why the evidence could not be obtained included in the claims folder. This procedure provides an internal check on our development practices, and ensures consistency throughout the AMC.

The AMC has received assistance in remand processing from three of VBA's resource centers. This allowed the AMC to establish a workflow that develops cases in a timely, efficient, and accurate manner. During FY 2003, regional offices were taking an average of 700 days to complete a remand. In FY 2005, average proc-

essing time for a remand completed at the AMC was 400 days. Currently, the AMC is averaging 343 days to process a remand. We continue to strive for further improvement. A strategic goal of 230 days to complete a remand has been established. This goal represents the minimum time needed to complete a remand given the notification, evidence collection, and follow-up requirements of the Veterans Claims Assistance Act and other legal requirements.

Steady improvement also continues as a result of the AMC's effective working relationships with many of the veterans service organizations (VSOs). The VSOs work directly with our decisionmakers and help reduce administrative waiting time. When the VSOs are satisfied that a case is ready to be certified back to BVA, they complete the necessary forms and assist us in getting the case back to the BVA for a final determination.

The AMC's progress in improving the quality of remand processing is demonstrated by the reduction in the number of cases remanded a second time. Two years ago, approximately 35 percent of the cases certified to BVA by the AMC were again remanded to the AMC. Today, approximately 85 percent of the cases certified to BVA by the AMC are accepted and finalized.

The AMC remand inventory at the end of FY 2006 was 14,650. Currently, the inventory is 18,300. One of the reasons for the increased inventory is the increase in the number of remands received during the Fiscal Year. Last year the AMC received 15,008 remands, an average of 1,250 per month. Even with the reduced remand rate, we are this year receiving an average of 1,417 remands per month. In addition, because of VBA's increased disability claims workload, the three resource centers that had been assisting the AMC were redirected to supporting regional offices with high workload inventories.

To address the remand workload, the AMC was authorized to increase its staffing level from 87 employees to 105 employees. These new employees have gone through centralized training and are now receiving training at the AMC. Many of our new hires will attain journey-level status toward the end of FY 2008 and will then be able to significantly contribute to remand production. The long-term impact of our hiring will be that the AMC will become self-sufficient, and will continue to improve both the timeliness and accuracy of remand processing.

Conclusion

In summary, VBA has made a concentrated effort to improve appellate processing and focus on the remand workload by establishing a centralized processing center that establishes a core expertise in this area. The AMC is dedicated to properly and accurately assembling any evidence needed, as directed by BVA, in order to expeditiously process the remands. We believe we are moving in the right direction, and continuing efforts will allow us to significantly improve the appeals process for veterans.

Mr. Chairman, this concludes my statement. I will be happy to respond to any questions that you or other Members of the Subcommittee might have.

Prepared Statement of Hon. James P. Terry, Chairman, Board of Veterans' Appeals, U.S. Department of Veterans Affairs

Good morning, Chairman Hall, Mr. Lamborn and Members of the Subcommittee. It is a pleasure to be here today to discuss with you the Board of Veterans' Appeals' (Board's) role in the VA benefits claims adjudication system. I will address Board productivity, the accuracy of our decisions, current issues affecting the Board, and a review of those actions we are taking to improve the claims and appeals adjudication process.

The Board renders final decisions on behalf of the Secretary on all appeals of adverse decisions issued under a law that affects the provision of VA benefits. These appeals most commonly arise from decisions of VA regional offices, but also include those arising from decisions by VA medical centers. Although the Board is an appellate body, it has fact-finding authority and provides a fresh look at the law and evidence in each case it considers. In addition to ruling on the merits of a claim, the Board may direct further development of the evidence and readjudication of the claims at issue by the agency of original jurisdiction (AOJ) if it is necessary to fairly consider the appeal.

The Board has jurisdiction over a wide variety of issues and matters, but the vast majority of appeals involve claims for disability compensation benefits, such as claims for service connection, an increased rating, or survivor's benefits, which were denied at the VA regional office (RO) level. The Board's objective is to produce well-

reasoned, accurate, timely, and fair appellate decisions in all the cases that come before us.

As I testified last year before this Committee, two of the Board's most important initiatives are: (1) To contain and reduce the backlog of appeals by increasing decision productivity, while maintaining high quality; and (2) to improve timeliness and service to veterans by eliminating avoidable remands in order to issue more final decisions.

I am happy to report that we have had much success in working toward both these goals, as demonstrated by comparing our past performance with that of recent years.

In Fiscal Year (FY) 1994, the Board issued 22,045 decisions with 442 full time equivalent employees (FTE). Our pending caseload stood at 47,148, and was on its way to 60,000. By FY 1998, we had significantly improved our productivity by issuing 38,886 decisions and holding 4,875 hearings, with 483 authorized FTE.

Most recently, in FY 2006, the Board issued 39,076 decisions. We also conducted 9,158 hearings, the highest number ever by the Board, and almost twice as many hearings as in 1998. In 2007, we are on track to exceed both these figures.

The Board's most significant challenge for the future is to eliminate the growing backlog. We will continue to use our resources as efficiently and effectively as possible to meet this challenge. However, despite our best efforts, we continue to receive more appeals than we are deciding. Cases pending at the start of FY 2006 stood at 37,539, and by the beginning of FY 2007 rose to 40,265. This is despite the fact that the Board issued 4,901 more decisions in FY 2006 than in the previous year. We have already exceeded the FY 2006 total at this point in 2007.

To enable the Board to eliminate the growing backlog, the two most important goals for the Board are to continue efforts to reduce avoidable remands and increase productivity. In regard to remands, we know that veterans want timely and correct decisions with respect to their claims for benefits. For the Board to do that, the record must contain all evidence necessary to decide the claim and show that all necessary procedural protections have been provided. If the record does not meet these requirements, and the benefits sought cannot be granted, a remand for further development by the AOJ is necessary.

Remands significantly lengthen the amount of time it takes for a veteran to receive a final decision. A remand adds about a year to the appellate process. Remands not only delay individual cases, but divert resources from deciding new appeals. About 75 percent of cases remanded are returned to the Board, which increases our workload and further degrades timeliness. In addition, because by law we generally must decide the oldest cases first, processing of newer appeals is delayed when remanded appeals are returned to the Board for readjudication. Hence, eliminating avoidable remands is a goal that will provide better service to veterans and their families and, ultimately, will contribute to diminishing the growing backlog.

Since FY 2005, when we began working concertedly with the Veterans Benefits Administration (VBA) to avoid remands to the extent possible, we have made great progress in reducing avoidable remands. To illustrate briefly, in FY 2003, the Board issued 31,397 decisions, with a remand rate of 42.6 percent. In FY 2004, while the number of decisions issued increased to 38,371, the remand rate soared to 56.8 percent. In FY 2005, we issued 34,175 decisions of which 38.6 percent were remanded in whole or part. We are happy to report that in FY 2006, we issued 39,076 decisions, with a remand rate of only 32 percent. We have seen the remand rate hold its own during FY 2007, as we have produced more cases on appeal than a year before and will exceed 40,000 decisions on appeal this Fiscal Year.

By "avoidable" remands, we are referring to a class of cases in which a remand could have been avoided if the case was properly processed and reviewed in accordance with existing laws and regulations. It is important to note that under the current adjudication system a certain percentage of remands are expected for various reasons beyond VA's control. For example, some cases must be remanded to address intervening changes in the law, new medical evidence, changes in medical condition, or other due process considerations. On the other hand, some remands can be avoided by careful development of the record and application of the appropriate law, as well as close analysis of the record and consideration of a harmless error analysis.

We continue to work closely not only with VBA, but with the Office of General Counsel (OGC) and the Veterans Health Administration (VHA) to identify and track the root causes of remands in order to provide training that will eliminate avoidable remands. Our training efforts have been considerable. Several training sessions on remand avoidance have been held for all Veterans Law Judges (VLJs) and staff counsel. We have also held joint training sessions with VBA, including a national video broadcast, on avoidable remands and evidence development. We have con-

ducted numerous sessions on a variety of medical and legal subjects within our jurisdiction—all designed to reduce remands and improve quality. Additionally, each of our Travel Boards has met with regional office (RO) personnel to answer questions, conduct training, and/or discuss shared areas of concern. Finally, we have been working with VHA and VBA through the Compensation and Pension Examination Project (CPEP) to improve the quality of VA compensation medical examinations, which is reducing a major cause of remands.

Another important challenge for the Board is to work closely with the 57 ROs and the Veterans Service Organizations to ensure that Travel Boards are dispatched as soon as a sufficient number of cases that are nearing their place on the Board's docket are ready for hearing. In 2007, in addition to 114 scheduled Travel Boards, 12 unscheduled trips to San Antonio, Texas (3 trips); Seattle, Washington; New York City, New York; Atlanta, Georgia; Phoenix, Arizona; Cleveland, Ohio; Huntington, West Virginia; Albuquerque, New Mexico; Houston, Texas, and San Diego, California were added after the ROs provided notice that the docket was ready. The Board also expanded a scheduled Travel Board to St. Petersburg, Florida, from 1 week to 2 weeks at the request of the RO. These additions during the year resulted in a total of 126 Travel Boards for 2007. Of the 126 Travel Boards, 5 were combined trips which visited two ROs (Lincoln/Des Moines, Fargo/Sioux Falls, Ft. Harrison/Boise, Denver/Cheyenne, and Togus/White River Junction). On the last 2 days of each of our Travel Boards, we offer training and assistance by our staff attorneys to the RO adjudication staff. This is as much of a benefit to the Board as to the RO staff if it precludes one case from being returned to the RO from the Board via remand for further development.

Although much has been done, we still have much to do in increasing productivity at the Board. Within existing resources, and by way of incentives and sound management, we will continue to improve by:

1. **Eliminating avoidable remands;**
2. **Strengthening our intra-agency partnerships:** Our joint training efforts with VBA, OGC, and VHA are improving decision quality and reducing remands;
3. **Writing shorter and more concise decisions:** We continue to train and encourage our VLJs and counsel to write clear, concise, coherent, and correct decisions;
4. **Utilizing employee incentive, mentoring and training programs:** A number of new programs have been introduced to increase employee motivation and satisfaction, as well as to increase productivity and decision quality;
5. **Making judicious use of overtime:** We will use overtime within existing resources to enhance productivity;
6. **Increasing our use of paralegals:** We will increase the use of our paralegals for non-decisional support activities, freeing up our legal staff to decide appeals;
7. **Providing improved online legal research tools and analytical frameworks** to aid timely and correct decision production;
8. **Succession planning:** The Board will continue its rigorous associate counsel recruitment program to hire the best and brightest attorneys available;
9. **Improve quality:** The Board will use its quality review process to identify areas of concern that require follow-up training;
10. **VLJs will draft some decisions,** in addition to reviewing and revising drafts prepared by staff counsel; and
11. **Aggressive recruiting and training** program to ensure full productivity by maintaining our authorized staffing levels.

We believe these measures will reduce the backlog and shorten the time it takes for a veteran to receive a fair, well-reasoned Board decision. In addition to the Board's increases in productivity, we have also improved decision quality. In FY 2006, the Board's decision quality was 93 percent, based on 39,076 total decisions issued. We are proud to report that in FY 2007, not only will the Board increase its total decision output to over 40,000 cases, but the Board's decision quality will be maintained at over 93 percent. By decision quality, we mean that there were no substantive or procedural errors that would have resulted in the case being reversed or remanded to the Board by the United States Court of Appeals for Veterans Claims. Into the fourth quarter of FY 2007, we find that the enhanced decision quality of 93.4 percent is being maintained.

Although there was an increase in quality and quantity, the Board saw its pending caseload grow significantly in 2006 and 2007. As I briefly noted earlier, in addition to issuing 39,076 decisions in FY 2006 and more than 40,000 projected for FY 2007, we conducted 9,158 hearings in 2006 and expect to conduct more than

10,000 in 2007. This is the greatest number of hearings ever held by the Board. However, the number of cases pending before the Board at the beginning of FY 2007 was 40,265, which was close to a 3,000 case increase over the 37,539 cases that were pending at the beginning of FY 2006. This increase in pending cases occurred despite the increase in the number of decisions issued of nearly 5,000 in 2006 over 2005 and an even greater number of decisions issued this year than in 2006. By the end of this September, we expect to have about 28,500 cases with a pending request for a Board hearing. Of these cases, approximately 8,000 are actually ready for a hearing. Our 126 Travel Boards in FY 2007 have sharply reduced the number of pending hearings from 1 year ago.

Although we continue to operate below a required personnel level, our attorneys and judges are ahead of last year's pace in terms of productivity. I attribute this increased productivity to superb leadership in each of our Decision Teams and in our Administrative support division, an unparalleled inhouse training and mentoring program, and to the quality of our support staff and the line attorneys that draft complex, quality decisions in an accurate and timely manner.

As you know, we have high expectations for our counsel and Veterans Law Judges. We ask each of our counsel to write more than three complete draft decisions a week, and each of our line Judges to review, modify as necessary, and sign an average of at least 19 decisions a week. Over the course of the year, the Board's fair share standards call for our attorneys to complete a total of 156 timely decisions of high quality, and for each of our line Judges to complete and sign 752 decisions. We are also concentrating on quickly dispatching the final decisions to the applicant and his or her representative through improved administrative processing. In addition, each Judge is expected to complete at least 3 week-long Travel Board trips per year, in which they hear cases at one of the 57 ROs and at several satellite offices. An experienced staff counsel accompanies the Judges during these Travel Board trips to assist in the conducting of the hearings and to provide training and other requested assistance to the RO staff.

Finally, I would like to mention a new initiative directed by Secretary Nicholson that will greatly assist our timely resolution of new appeals. The Expedited Claims Adjudication Initiative, briefed to the staffs of the House and Senate Veterans' Affairs Committees earlier this year, and to VSO representatives as well, will offer an expedited process to represented claimants who desire to shorten the time required to process their claims. At four selected Regional Office locations (Philadelphia, Nashville, St. Paul and Seattle), the VBA and the Board will provide a 2 year model to streamline the claims adjudication and appeals process system-wide. A veteran who elects to participate in this program will be required to waive time periods not required to address his or her claim, and in return, will be placed on a fast track for adjudication. The rapid disposition of these claims will reduce the backlog and thereby ultimately improve the overall timeliness of claims processing. In addition, the pilot program will provide useful information on the efficacy of revising timelines in current law and regulation to establish a fair, but streamlined, claims adjudication process. The regulations required to effect this program through their publication in the Federal Register have been drafted and are now under Departmental review.

In conclusion, we will continue working to develop new and creative solutions to the challenges we face in order to fulfill our statutory mission to hold hearings and provide timely, high quality decisions to our Nation's veterans and their families.

I am pleased to answer any questions you or your colleagues may have.

Committee on Veterans' Affairs
Subcommittee on Disability Assistance and Memorial Affairs
Washington, DC.
October 1, 2007

Mr. Robert Chisholm
National Organization of Veterans Advocates
P.O. Box 65876
Washington, DC 20035

Dear Mr. Chisholm:

Thank you for testifying before the House Committee on Veterans' Affairs Subcommittee on Disability Assistance and Memorial Affairs hearing on the Board of Veterans' Appeals and the Appeals Management Center.

I am submitting additional questions to be included in the hearing record. I would appreciate your response to the enclosed additional questions for the record by close of business October 15, 2007.

Please restate the question in its entirety and please provide your answers consecutively on letter size paper, single spaced.

Thank you for your consideration in this matter.

Sincerely,

Doug Lamborn
Ranking Republican Member

Questions for the Record
Hearing on Board of Veterans Appeals and the Appeals Management Center
Subcommittee on Disability Assistance and Memorial Affairs
September 25, 2007

Mr. Chisholm

1. We all know how it is difficult to retain attorneys here in Washington, DC. Why couldn't we place the board into satellite offices that could look at cases regionally? There may not be as much of a problem finding attorneys in other parts of the country and we all know that the space would be cheaper than downtown Washington, DC. What are your thoughts on this idea?

[THERE WAS NO RESPONSE RECEIVED FROM MR. CHISHOLM.]

Committee on Veterans' Affairs
Subcommittee on Disability Assistance and Memorial Affairs
Washington, DC.
October 1, 2007

Mr. Bart Stichman
National Veterans Legal Services Program
1600 K Street, Suite 500
Washington, DC 20003

Dear Mr. Stichman:

Thank you for testifying before the House Committee on Veterans' Affairs Subcommittee on Disability Assistance and Memorial Affairs hearing on the Board of Veterans' Appeals and the Appeals Management Center.

I am submitting additional questions to be included in the hearing record. I would appreciate your response to the enclosed additional questions for the record by close of business October 15, 2007.

Please restate the question in its entirety and please provide your answers consecutively on letter size paper, single spaced.

Thank you for your consideration in this matter.

Sincerely,

Doug Lamborn
Ranking Republican Member

Questions for the Record
Hearing on Board of Veterans Appeals and the Appeals Management Center
Subcommittee on Disability Assistance and Memorial Affairs
September 25, 2007

Mr. Stichman

1. We all know how it is difficult to retain attorneys here in Washington, DC. Why couldn't we place the board into satellite offices that could look at cases regionally? There may not be as much of a problem finding attorneys in other parts of the country and we all know that the space would be cheaper than downtown Washington, DC. What are your thoughts on this idea?

[THERE WAS NO RESPONSE RECEIVED FROM MR. STICHMAN.]

Committee on Veterans' Affairs
Subcommittee on Disability Assistance and Memorial Affairs
Washington, DC.
October 1, 2007

Mr. Carl Blake
National Legislative Director
Paralyzed Veterans of America
801 18th Street, NW
Washington, DC 20006

Dear Mr. Blake:

Thank you for testifying before the House Committee on Veterans' Affairs Subcommittee on Disability Assistance and Memorial Affairs hearing on the Board of Veterans' Appeals and the Appeals Management Center.

I am submitting additional questions to be included in the hearing record. I would appreciate your response to the enclosed additional questions for the record by close of business October 15, 2007.

Please restate the question in its entirety and please provide your answers consecutively on letter size paper, single spaced.

Thank you for your consideration in this matter.

Sincerely,

Doug Lamborn
Ranking Republican Member

Paralyzed Veterans of America
Washington, DC 20006
October 11, 2007

Honorable Doug Lamborn
Ranking Member
House Committee on Veterans' Affairs
Subcommittee on Disability Assistance and Memorial Affairs
335 Cannon House Office Building
Washington, DC 20515

Dear Ranking Member Lamborn:

On behalf of Paralyzed Veterans of America (PVA), I would like to thank you again for the opportunity to testify before the House Committee on Veterans' Affairs, Subcommittee on Disability Assistance and Memorial Affairs on Tuesday, September 25, 2007.

Following the hearing, you submitted additional questions as it regards this program. The attached document provides PVA's response to your further inquiry about the Board of Veterans' Appeals.

PVA looks forward to working with you and Chairman Hall to ensure that any proposed changes to the operations of the Board of Veterans' Appeals and the Appeals Management Center are reasonable and beneficial to veterans and the system. Thank you again.

Sincerely,

Carl Blake
National Legislative Director

Question 1: We all know how it is difficult to retain attorneys here in Washington, DC. Why couldn't we place the Board into satellite offices that could look at cases regionally? There may not be as much of a problem finding attorneys in other parts of the country and we all know that the space would be cheaper than downtown Washington, DC. What are your thoughts on this idea?

Answer: First, we completely disagree with the initial assertion of your question. We do not believe that veterans have a hard time finding lawyers. That is not to say that veterans who present cases with no merit do not have problems finding lawyers. In fact, the Veterans Consortium Pro Bono program located here in Washington does not have problems finding lawyers to represent veterans before the Court of Appeals for Veterans Claims. As the Pro Bono Program has continued in its outreach activities, the number of attorneys from around the country interested

in representing veterans has increased. Referrals are available via the usual pathways, such as legal aid and State Bar Associations as well as via the internet.

PVA has long opposed the decentralization of the Board of Veterans' Appeals (BVA) each time Congress has raised the question in the past. Furthermore, we still disagree with the idea. BVA was decentralized early in its history. But decentralization results in greater inconsistency. The 73rd Congress, in P.L. Number 2, enabled the President to establish special boards to review veterans' claims. President Roosevelt created the BVA in 1933 via Executive Order 6230. Congress established the Board as a statutory body by statute in 1946. By housing BVA in the same building and sharing the same resources, consistency is improved over a decentralized system.

We also believe other problems might arise from decentralizing the Board. First, because the people at BVA are a group, over time they develop similarities in their interpretations of rules and similarity in their understanding of certain medical issues, military history, jargon, and the historical background of certain regulations and administrative issues; thereby increasing consistency by this group-think. Several years ago, BVA noticed that its four sections (BVA is divided into four sections by geographic jurisdiction) tended to develop a group-think internally within each section leading to decisions that tended to depend more on the section making the decision than the law or the evidence. BVA then began rotating staff into and out of the sections in order to develop more overall consistency. If the Board was physically divided, the possibility of developing a regional group-think is worse and therefore overall inconsistency greatly increases once again.

Second, if the BVA is located at regional offices (RO), mission creep becomes a factor. In other words, BVA staff begins to perform tasks that support the mission of the RO in addition to their own mission. A centralized Board prevents the VA offices from pulling BVA staff away from their primary responsibility. BVA was quoted as saying, "it was felt that such actions [i.e., consultations with others within VA] were not consistent with the legislated judicial detachment and autonomy of the Board."[1] Interaction between BVA staff and RO staff inevitably promotes mutual inter-dependence and reduces that detachment and autonomy.

Third, a decentralized BVA would create a loss of economy of scale. If BVA is divided into several physical locations, expenditures would increase in order to pay for redundant office space, utilities, equipment, support staff, mail processing, and security. VA would also have much greater travel expenses to pay for in order to conduct centralized training events or manage conferences. Decentralized structure is simply not the way to save money on operations. In fact, prior studies of VA operations, such as the W.R. Grace Commission in the 1980s, have recommended reducing the number of VA offices in order to make more efficient use of available resources.

Fourth, attorneys may interact with VA at a variety of locations and levels. BVA hearings are routinely conducted via a videoconference at the office or medical facility nearest to the veteran with the Veteran Law Judge sitting in D.C. Claim files are routinely transferred to VA offices for attorneys to review and are copied upon request. Accelerating the effort to move VA to an electronic claim record would greatly reduce the relevancy of where BVA is physically located.

We therefore recommend that as attorneys approach the veteran arena, they should utilize educational opportunities, such as the Veterans Consortium Pro Bono Program and the Annual Conference of the U.S. Court of Appeals for Veterans Claims to become familiar with this area of law. Furthermore, we recommend that attorneys review the resources available on the Internet such as the webpage operated by The National Association of Veterans Advocates (NOVA), including their chat room. In this way, the pool of available attorneys competent in this area of law may grow.

Committee on Veterans' Affairs
Subcommittee on Disability Assistance and Memorial Affairs
Washington, DC.
October 1, 2007

Mr. Steve Smithson
The American Legion
10608 L Street, NW
Washington, DC 20006

Dear Mr. Smithson:

Thank you for testifying before the House Committee on Veterans' Affairs Subcommittee on Disability Assistance and Memorial Affairs hearing on the Board of Veterans' Appeals and the Appeals Management Center.

I am submitting additional questions to be included in the hearing record. I would appreciate your response to the enclosed additional questions for the record by close of business October 15, 2007.

Please restate the question in its entirety and please provide your answers consecutively on letter size paper, single spaced.

Thank you for your consideration in this matter.

Sincerely,

Doug Lamborn
Ranking Republican Member

Questions for the Record
Hearing on Board of Veterans' Appeals and the Appeals Management Center
Subcommittee on Disability Assistance and Memorial Affairs
September 25, 2007

Mr. Smithson

1. We all know how it is difficult to retain attorneys here in Washington, DC. Why couldn't we place the Board into satellite offices that could look at cases regionally? There may not be as much of a problem finding attorneys in other parts of the country and we all know that space would be cheaper than downtown Washington, DC. What are your thoughts on this idea?

Response: The American Legion is not aware of any specific problems the BVA is having with finding or retaining attorneys related to the location of the Board in Washington, DC. The Legion would, however, be happy to review any relevant data you have pertaining to this issue. The production pressure on BVA attorneys caused by the increasing number of appeals will be a constant no matter where the Board is located. There are both pros and cons to having the BVA located in Washington, DC, but it is the opinion of The American Legion that any disadvantage to having the BVA in Washington, DC, is outweighed by the advantage of having a centrally located BVA in proximity to VA Central Office. Additionally, having the BVA located in Washington, DC, creates a barrier between BVA and the VA regional offices, helping to establish the BVA as a separate entity independent of the regional offices. Moreover, there is nothing to suggest that creating satellite regional BVA offices would improve the quality of the BVA work product. Moving the BVA to the "field" closer to VA regional offices, however, could adversely impact its independent identity and cause an increased number of inconsistent BVA adjudications.

Committee on Veterans' Affairs
Subcommittee on Disability Assistance and Memorial Affairs
Washington, DC.
October 1, 2007

Mr. Eric A. Hilleman
Deputy Director
Legislative Affairs Office
Veterans of Foreign Wars of the United States
200 Maryland Ave, NE
Washington, DC 20002

Dear Mr. Hilleman:

Thank you for testifying before the House Committee on Veterans' Affairs Subcommittee on Disability Assistance and Memorial Affairs hearing on the Board of Veterans' Appeals and the Appeals Management Center.

I am submitting additional questions to be included in the hearing record. I would appreciate your response to the enclosed additional questions for the record by close of business October 15, 2007.

Please restate the question in its entirety and please provide your answers consecutively on letter size paper, single spaced.

Thank you for your consideration in this matter.

Sincerely,

Doug Lamborn
Ranking Republican Member

Questions for the Record
Hearing on Board of Veterans' Appeals and the Appeals Management Center
Subcommittee on Disability Assistance and Memorial Affairs
September 25, 2007

Eric A. Hilleman

Question

We all know how it is difficult to retain attorneys here in Washington, DC. Why couldn't we place the board into satellite offices that could look at cases regionally? There may not be as much of a problem finding attorneys in other parts of the country and we all know that the space would be cheaper than downtown Washington, DC. What are your thoughts on this idea?

Response

With 276 attorneys for every 10,000 residents [1] the last thing Washington, DC has is a shortage of lawyers. The difficulty of recruiting and retaining qualified attorneys, if such difficulty exists, does not stem from the lack of attorneys but, rather, from the inadequacy of the pay and, probably more relevant, the nature of the work and extremely high caseloads.

The idea of breaking up the BVA and sprinkling Veteran Law Judges, with supporting staff and clerical assistance, like flower seeds across the countryside has been around for years. Simply moving Board sections out of Washington will only ensure that Board sections have been moved out of Washington. The largest VA regional offices are currently located in St. Petersburg, FL, New York City, Houston, Chicago, Los Angeles and San Francisco. The cost of living in New York, Los Angeles and San Francisco is higher than it is here in Washington, while the number of available attorneys is less than 1/10th that of Washington, suggesting that competition in those cities would be more, not less, intense than it is here.

While the cost of living in St. Petersburg, Houston and Chicago may be less than Washington, the competition for available lawyers would, in our view, remain problematic.

Other problems would stem from the break-up of the BVA.

- Loss of economies of scale
  - Clerical staff would increase
  - Training of staff attorneys and support staff becomes more difficult and less efficient
  - Training would become less uniform and more fragmented
  - Increased difficulty in responding to staffing imbalances
  - Travel expenses for Travel Board hearings could actually increase in some areas
- Depending on the location of the Boards, office space could cost more than Washington, DC
- Personal hearings would likely increase since travel to regionalized Boards would be less expensive for some appellants

Why is the creation of a second AMC site away from Washington desirable when breaking up and relocating the BVA is not?

The fundamental difference in these proposals lies in the source of the highly trained employees needed by VA to process either BVA appeals or AMC remands. In the case of the BVA, the source of employees is those admitted to practice law. As pointed out above, there are over 10 times as many lawyers available in Washington, DC, as there are anywhere else.

However, the Appeals Management Center requires trained and skilled Veterans Service Representatives with both adjudication and rating specialization. There is no source of trained VSR's in Washington. Consequently, every new VSR must be trained in a regional office somewhere far from Washington and enticed to move here. Even with the occasional relocation bonus, VA has found it extremely difficult

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[1] Avery Index; http:www.averyindex.com/lawyers_per_capita.php

to recruit VSR's for work in Washington. It is based on these facts that we propose the recreation of an AMC in a medium sized city where the cost of living was reasonable and VA would be a major, or at least competitive, employer. Those factors would allow VA to recruit more VSR's than they can today with the lure of an additional pay grade.

The proposal to regionalize the BVA is an interesting concept. However, we do not believe that it would be any more effective in solving an attorney recruitment and retention problem. At the same time, we believe that additional problems would be created which would aggravate, not resolve, the number of cases pending at the BVA.

We suggest that if recruitment of staff attorneys is a problem, then VA should use its authority to grant recruitment and retention bonuses, augmenting salaries by 10 or 15 percent.

Committee on Veterans' Affairs
Subcommittee on Disability Assistance and Memorial Affairs
Washington, DC.
October 1, 2007

Honorable James Terry
Chairman, Board of Veterans' Appeals
810 Vermont Ave, NW
Washington, DC 20430

Dear Chairman Terry:

Thank you for testifying before the House Committee on Veterans' Affairs Subcommittee on Disability Assistance and Memorial Affairs hearing on the Board of Veterans' Appeals and the Appeals Management Center.

I am submitting additional questions to be included in the hearing record. I would appreciate your response to the enclosed additional questions for the record by close of business October 15, 2007.

Please restate the question in its entirety and please provide your answers consecutively on letter size paper, single spaced.

Thank you for your consideration in this matter.

Sincerely,

Doug Lamborn
Ranking Republican Member

Questions for the Record
Hearing on Board of Veterans Appeals and the Appeals Management Center
Subcommittee on Disability Assistance and Memorial Affairs
September 25, 2007

Honorable James Terry

Question 1: What type of training programs does the Board use for new employees? Also, what type of training exists for current employees to ensure their continued accuracy in decisions?

Response: The Board of Veterans' Appeals (BVA) provides the following training on both legal and medical matters to all new staff counsel:

- *Introduction to the Board of Veterans' Appeals (BVA 101)*—This introduces new employees to the structure, operations and policies of BVA. 2-hour course.
- *Basic Veterans' Law (BVA 201)*—This is an introduction to the law of the U.S. Court of Appeals for Veterans Claims and the relevant rulings of the U.S. Court of Appeals for the Federal Circuit. 12-hour course.
- *Computer Skills Training (CST)*—This provides computer information and tips to enable more efficient drafting of decisions using BVA's computer system. 1-hour course.
- *Global Training*—This provides an overview of BVA's management and administration process. Attorneys have the opportunity to learn firsthand about the journey of a case file once it is received at the Board. 3-hour course.
- *Mentoring*—This is a 3-month period where the attorney is tutored on all aspects of decision preparation by a senior BVA counsel.

- *Adjudication Academy*—This is a 2-day offsite collaborative effort by the Veterans Health Administration (VHA), Veterans Benefit Administration (VBA) and the Office of General Counsel to provide new BVA attorneys an opportunity to learn about the role these administrations have in the adjudication process. This course is conducted approximately once a year in Baltimore.

BVA's four decision teams schedule internal team training events for new attorney staff and summer interns on an "as needed" basis. During 2006 and 2007, the teams provided training on a wide variety of topics, including the Veterans Claims Assistance Act (VCM) and basic service connection concepts; increased ratings; quality reviews; handling of multi issues/complex cases; efficient handling of cases; career development; hearing loss; personal experiences of BVA veterans; research tools; a presentation by Disabled American Veterans national veterans service organization representatives; conducting BVA hearings; medical opinion requests; BVA rules of practice and procedure; BVA handbooks; and VA benefits overview.

BVA also devotes a substantial amount of time and resources to providing training to our veterans law judges (VLJs) and staff counsel. Besides VA-wide periodic training on cyber security, the Privacy Act, the No FEAR Act, sexual harassment, and Federal ethics requirements, a wide variety of training is provided to enable BVA to produce high-quality decisions in a timely manner. BVA has a full-time training coordinator who, in close coordination with BVA's Chief Counsel for Policy, is responsible for scheduling and organizing BVA training events, which usually average about twice a month. Training on various topics related to computer-assisted legal research also is periodically scheduled by BVA's librarian. Additionally, the BVA sends individually selected employees to management and leadership training courses provided by the Office of Personnel Management and the Federal Executive Institute.

With respect to BVA training provided to VLJs and attorneys, it can be broken down into the following five categories: 1) critical skills training; 2) current issues and competency training; 3) specialized skills training; 4) leadership/management development training; and 5) mandatory training. Examples of training provided within each of these categories include:

Critical Skills Training

- *Writing Training*—Periodically provided to upgrade writing skills. At the beginning of 2006, BVA initiated a writing skills program entitled the "4–Cs," short for clear, concise, coherent, and correct decision writing. This training addressed a number of matters, including the increasing length of BVA decisions due, in part, to long recitations of fact and boilerplate summaries of the law, and reasons or bases deficiencies in BVA decisions.
- *Legal Research*—Initial training is offered to new employees and product upgrade/enhancement training is offered on an ongoing basis to the entire attorney and VLJ staff concerning the use of computer-assisted legal research tools.

Current Issues and Competency Training

- *Educational Seminars*—Seminars of a medical and legal nature are offered monthly (approximately 10 per year) and range in length from 1-hour to an hour and a half. Participation is voluntary. Examples of some recent topics covered are: adjudicating Gulf War claims; rating residuals of gunshot wounds; adjudicating medical reimbursement claims; rating eye disorders; understanding military records and awards; adjudicating Section 1151 claims; adjudicating Section 1318 claims; aggravation of disabilities, rating disabilities of the spine, evaluation of lay evidence, presumptive service connection, and introduction to medical terminology.
- *Grand Rounds*—Periodic Grand Rounds training sessions are provided for all VLJs and staff counsel. Attendance is required. The purpose of these training sessions is to keep the legal staff current with continuing changes in the law, to address areas of weakness in BVA decision quality, and to address current "hot" issues.

Specialized Skills Training

- *Income Verification Match*—This is required for selected attorneys and VLJs who handle cases that include protected tax information.

Leadership/Management Development Training

- Office of Personnel Management
- Federal Executive Institute
- Leadership VA
- VA Learning University sponsored leadership training

Mandatory Training

- Privacy Policy
- Cyber Security Awareness
- Federal Employee Antidiscrimination and Retaliation Act (No FEAR)
- Prevention of Sexual Harassment
- Ethics

Question 2: You stated in your testimony that on the last two days of the traveling board your staff attorneys give training and assistance to regional office staff. Is this training standardized and how is it administered?

Response: With respect to BVA's participation in regional office training, BVA conducts training for regional office (RO) adjudication staff both during travel board visits and by way of videoconference. Over the past few years, we have conducted numerous such sessions of varying length on a variety of medical and legal subjects designed to reduce remands and improve quality.

During travel board trips, the attorney staff who are sent to assist the VLJs, as well as some of the VLJs, meet with RO staff to answer questions, discuss shared areas of concern, and provide training when requested. Such interactions are mutually beneficial to both organizations in reducing remands and ensuring cases are fully and properly developed and processed.

Prior to a travel board, the attorney assigned to the trip contacts the RO to determine possible formal training topics and to offer informal training and assistance. Based on the reports received from travel boards conducted during fiscal 2007, BVA attorneys have provided informal training to the RO staff during 116 of the 123 travel boards. Informal training consists of case reviews, determinations of adequacy of development, recent U.S. Court of Appeals for Veterans Claims (CAVC) cases, trends noticed in hearing cases, and tips to reduce avoidable remands. Informal training is usually provided on a one-on-one basis with rating veterans' service representatives, decision review officers, and adjudication managers. Formal training, on the other hand, was provided during 76 of the 116 trips, or 66 percent of the time. While training topics vary, the most common topics addressed by BVA staff this year were matters related to post traumatic stress disorder (PTSD) service connection claims, VCAA notification, when a VA examination is required, and the discussion of recent CAVC decisions. A complete list of the training topics addressed and at particular ROs is attached.

For purposes of comparison, based on the reports received from travel boards conducted during fiscal 2006 that were BVA attorneys provided informal training during 109 of the 114 travel boards trips. With respect to formal training, this occurred during 62 of the 109 trips, or 57 percent of the time. The most common training topics addressed were PTSD service connection claims, VCAA notification, discussion of recent CAVC decisions *(Kent, Dingess, Haas),* when a VA examination is needed, application of the presumptions of aggravation and soundness, and assignment of effective dates. A complete list of the training topics addressed and at which particular ROs is attached.

Besides training conducted during travel board trips, BVA also provides training to the ROs by way of videoconference. This training is conducted by BVA's four decision teams to ROs located in that team's geographic region of the country. This type of training was conducted fairly frequently in the past, but less so in recent years. However, the BVA has recently started to see an upswing in the number of requests being received from RO staff to conduct this type of training. During fiscal 2006 and 2007, the following training has been conducted:

July 2006	**Decision tree for rating knee disabilities** (New Orleans, Little Rock, Jackson, Atlanta, Montgomery, St. Petersburg, Nashville and San Juan)
July 2006	**Local reasons for remand trends** (Louisville)
August 2006	**New and material evidence, *Kent* VCAA notice, and clear and unmistakable error.** (Hartford)
September 2006	**Evaluating back disabilities** (New Orleans, Little Rock, Jackson, Atlanta, Montgomery, St. Pete and San Juan) (Nashville—training materials only)
September 2006	**Medical examinations and opinions; rating knee disabilities** (Louisville)

October 2006	**Adjudicating *Nehmer* claims** (New Orleans, Jackson, St. Pete, Montgomery, Atlanta, and San Juan) (Jackson and Nashville—training materials only)
October 2006	**Earlier effective dates** (Houston)
November 2006	**VCAA duty to notify; duty to assist—obtaining medical and service records; due process issues; requesting VA examinations** (San Diego)
December 2006	**Questions & answers** (Boise)
December 2006	**Evaluating evidence** (Louisville)
January 2007	**VA medical examinations and opinions** (St. Pete, New Orleans, San Juan, Montgomery, and Atlanta) (Nashville—training materials only)
January 2007	**Special monthly compensation; competency and credibility of lay statements; VCAA duty to notify; local reasons for remand trends; VA medical examinations** (Salt Lake City)
February 2007	**VA medical examinations and opinions** (Little Rock)
February 2007	**Earlier effective dates; VA medical examinations and opinions; secondary service connection claims, including for alcohol abuse; service connection for "tension type" headaches; benefit of the doubt/reasonable doubt standard** (Phoenix)
March 2007	**VA medical examinations and opinions** (Jackson—awaiting delivery of new equipment)
March 2007	**Rating skin disorders; periodontal disease; claims for service connection based on aggravation; adjudicating** new and **material evidence claims; weighing non-medical evidence when rating mental and musculoskeletal disorders; VA medical examinations and opinions; duty to assist/additional records requests** (Ft. Harrison)
April/May 2007	**Weighing and evaluating evidence** (New Orleans, Little Rock, Jackson, Atlanta, Montgomery, St. Pete, Nashville and San Juan)
May 2007	**New and material evidence** (Louisville)
May 2007	**Common reasons for remand; *Haas v. Nicholson;* when to obtain a VA examination; when to issue a supplemental statement of the case** (Seattle, Boise)
May/June 2007	**VA examinations;** what is the proper way of requesting a VA examination/opinion; VA examinations—duty to assist for service connection claims; VA examinations—duty to assist for increased rating claims; discussion of *McLendon v. Nicholson,* 20 Vet. App. 79 (2006) (Newark, Boston, Buffalo, Providence, Columbia, Togus, Baltimore, Roanoke, Winston-Salem, Huntington, New York, Pittsburgh, Hartford, Manchester)
June 2007	**Aggravation of disabilities;** presumption of soundness; presumption of aggravation; 38 C.F.R. 3.310; application of *Allen v. Brown* (Hartford, Columbia, Boston, Buffalo, Baltimore, Newark)
June 2007	**Common reasons for remand; *McClendon v. Nicholson;* development of PTSD/sexual assault claims** (Los Angeles, San Diego)
July 2007	**Rating gunshot wound residuals** (Denver, San Diego)
August 2007	**PTSD stressors for Iraq veterans;** impact of *Pentecost v. Principi* (White River Junction, New York, Manchester, Hartford, Buffalo, Philadelphia, Newark, Boston)
September 2007	**Rating back disabilities** (Louisville)
September 2007	**Rating gunshot wound residuals** (Salt Lake City, Anchorage, Oakland, Sacramento)

Finally, besides the training that is provided during travel board trips and by way of videoconference, BVA regularly responds to informal requests received from RO

staff for our views and suggestions on a wide variety of case-related legal and medical Issues.

Question 3: We all know how it is difficult to retain attorneys here in Washington, DC. Why couldn't we place the board into satellite offices that could look at cases regionally? There may not be as much of a problem finding attorneys in other parts of the country and we all know that space would be cheaper than downtown Washington, DC. What are your thoughts on this idea?

Response: Our ability to obtain or retain attorneys has not been impaired by our location in Washington, DC. To the contrary, we believe our location in Washington, DC, enhances our ability to draw from an extremely well-qualified attorney applicant pool. Our recent efforts to fill attorney positions illustrate this point. When we advertised for 30 attorney positions this summer, we received over 350 applications, most from highly qualified candidates. We were in the enviable position of being able to offer employment to only the most highly-qualified applicants.

The question as to whether to regionalize BVA into satellite offices has been thoroughly considered in the past, most recently by the Government Accountability Office (GAO) in 2003. While the GAO did not issue a final report of this study, its research indicated that the difficulties associated with the decentralization process far outweigh the benefits of regionalization.

Because BVA is centralized at a single office in Washington, DC, BVA:

- Recruits from a pool of highly qualified attorneys and administrative professionals, while retaining some of our most highly qualified employees, who would be unwilling or unable to relocate if regionalization were to occur;
- Instantly communicates and discusses important legal and administrative issues with our judges, counsel and administrative staff, ensuring consistency of decisionmaking and administrative processes, such as the mailing of decisions;
- Maintains collegiality of, and uniform and consistent training for, our attorneys and judges;
- Achieves economies of scale from centralized resources to realize the most efficient workload distribution, as well as the flexibility to immediately readjust work flow as necessary to achieve optimum performance;
- Achieves the most efficient and cost-effective mechanisms for case and hearing management, while avoiding the costs and risks associated with file transfers to remote locations;
- Achieves the most efficient and beneficial use of professional and administrative employees, as well as the best means to ensure uniform opportunities for employee development and training;
- Preserves our independence and integrity as a quasi-judicial body, which would be compromised if we were co-located with the offices whose decisions we review on appeal.

With respect to your concerns about the availability of affordable work space in Washington, DC, the Department has expanded BVA's allocation of office space in the Lafayette Building, where the BVA has been located for many years. The Department is considering a further expansion of space in the near future. In addition, BVA has maintained a highly successful Flexiplace program, which allows up to 88 employees to work at home for part of the week and to use shared space on the alternate days that they are in the office. This "hoteling" arrangement maximizes the use of existing space, improves employee morale, contributes to reducing the commuting burden in the local area, but still ensures the effective accomplishment of our mission.

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