

**STATEMENT OF BLAKE ORTNER  
DEPUTY GOVERNMENT RELATIONS DIRECTOR  
PARALYZED VETERANS OF AMERICA  
BEFORE THE  
SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS  
OF THE  
HOUSE COMMITTEE ON VETERANS' AFFAIRS  
CONCERNING  
PENDING LEGISLATION**

**APRIL 14, 2015**

Chairman Abraham, Ranking Member Titus, and members of the Subcommittee, Paralyzed Veterans of America (PVA) would like to thank you for the opportunity to testify today on pending legislation before the Subcommittee.

**H.R. 675, the “Veterans’ Compensation Cost-of-Living Adjustment Act of 2015”**  
PVA fully supports H.R. 675, the “Veterans’ Compensation Cost-of-Living Adjustment Act of 2015,” that would increase, effective as of December 1, 2015, the rates of compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation (DIC) for the survivors of certain disabled veterans. This would include increases in wartime disability compensation, additional compensation for dependents, clothing allowance, and dependency and indemnity compensation for children.

However, consistent with our position in the past, PVA cannot support the rounding down of increases in compensation. While our economy has begun to improve, many veterans continue to struggle, their personal finances affected by rising costs of essential necessities to live from day to day and maintain a certain standard of living. Many veterans and their families depend on their compensation. While this may be a small amount, any reduction can have a critical impact, especially when compounded over time, on low-income veterans.

### **H.R. 677, the “American Heroes COLA Act of 2015”**

While PVA understands the logic behind an automatic increase in the annual COLA for veterans, PVA does not support H.R. 677, the “American Heroes COLA Act of 2015.” Historically, the annual COLA bill has been important legislation that must pass each year. During times of contentious relations in Congress, this critical legislation has been used as a vehicle to pass other important veterans legislation. PVA believes that removing this annual legislative option could potentially be detrimental to veterans. In addition, this annual requirement ensures continued oversight by the Subcommittee and full Committee.

### **H.R. 732, the “Veterans Access to Speedy Review Act”**

PVA supports H.R. 732, the “Veterans Access to Speedy Review Act.” As long as there is the ability to request an in-person hearing that the Board would be required to honor, we believe this will benefit both the claimant and the Board. At veteran service organization forums held by the Board, there has been an ongoing emphasis on holding video conferences whenever possible to reduce time lost for no-shows. Additionally, the grant rate for video versus in-person hearings is the same. In fact, PVA has encouraged service officers to hold video conference hearings and the vast majority of PVA hearings are now held via video conference.

PVA has testified on similar legislation in the past and has always had a concern with the use of the term “may” in the willingness of the Board to grant the request. PVA is

very pleased to see that in Section 2 regarding the appellant requesting a different location the term “shall” is used. This is critical in the case of older veterans, who may feel uncomfortable with video conferencing, believing it is less valid. We appreciate that the Board will defer to the veteran when determining the best course of action in the appeals process.

### **H.R. 800, the “Express Appeals Act”**

PVA is very pleased with the introduction of H.R. 800, the “Express Appeals Act” and for the co-sponsorship of Chairman Miller and Ranking Member Brown as well as Subcommittee Ranking Member Titus. We see this legislation as a good beginning and a framework for critical changes to the appeals process that may help veterans receive benefits they have earned more rapidly.

One concern we have with the pilot program is the opening of the pilot to existing traditional appeals. PVA believes that for the pilot to be a true test of the express appeals process, and allow veterans to receive optimal counseling prior to electing the program, it should only allow entrance into the pilot at the initial Notice of Disagreement (NOD) stage. While we understand that there may be concern about the fairness of allowing only new appeals, to do otherwise may create a flawed process and an imperfect test. In addition, VA should be required to provide more case-specific initial notice to veterans at the time of their denial so they can better understand why their claim was denied and whether election of the pilot program would be advisable.

PVA also wants to draw attention to the requirement of the Secretary to transfer employees from the Appeals Management Center (AMC) to the Board. We see this as a critical requirement to ensure the Board has experts to assist with the pilot program. However, we fear this may become an excuse by the Veterans Benefits Administration (VBA) for why they are unable to complete traditional appeals. While it can be expected that reducing resources or manpower will have an impact on AMC’s processing rate, we ask that the Subcommittee apply detailed oversight to ensure that any reduction is

appropriate and acceptable. Furthermore, oversight is critical to ensure transferred staff is properly trained to assist with implementing the pilot.

PVA also wants to ensure that veterans service representatives who are working under a Power of Attorney (POA) for a veteran has the ability to also be notified of actions on the appeal. As such, in section (c)(4)(C) and (D) we believe it should include language that adds "and his or her representative" to ensure a POA receives copies of whatever was done as part of the development and get another opportunity to provide argument.

#### **H.R. 1067, the "U.S. Court of Appeals for Veterans Claims Reform Act"**

PVA supports H.R. 1067, the "U.S. Court of Appeals for Veterans Claims Reform Act." PVA believes there is a coming flood of appeals due to VA's aggressive efforts to reduce the current backlog of veterans' claims. This legislation will provide the chief judge the flexibility to recall judges to support this potential dramatic increase in workload.

#### **H.R. 1331, the "Quicker Veterans Benefits Delivery Act of 2015"**

PVA strongly supports H.R. 1331, the "Quicker Veterans Benefits Delivery Act of 2015." Those veterans with catastrophic disabilities have the greatest need for health care services and this legislation will ensure that they are not forced into delays because the VA will not accept medical evidence from non-VA medical professionals. This bill is a high priority for PVA's members.

PVA has consistently recommended that VA accept valid medical evidence from non-Department medical professionals. The continuing actions of VA to require Department medical examinations does nothing to further efforts to reduce the claims backlog and may actually cause the backlog to increase in addition to delaying vital benefits for disabled veterans. We applaud Mr. Walz efforts to both define what constitutes "sufficiently complete" as well as institute reporting requirements to ensure VA is moving forward and attacking these unacceptable delays due to duplication of medical exams.

PVA would also like to see VA better adhere to its own "reasonable doubt" provision when adjudicating claims that involve non-VA medical evidence. We still see too many VA decisions where this veteran-friendly rule was not properly applied. As prescribed in 38 CFR §3.102, "When, after careful consideration of all procurable and assembled data, a reasonable doubt arises regarding service origin, the degree of disability, or any other point, such doubt will be resolved in favor of the claimant." More and more often it appears VA raters exercise arbitrary prerogative to avoid ruling in favor of the claimant, continually adding obstacles to a claimant's path without adequate justification for doing so. While due diligence in gathering evidence is absolutely necessary, too often it seems that VA is working to avoid a fair and legally acceptable ruling for the veteran that happens to be favorable. Both the failure to accept and tendency to devalue non-VA medical evidence are symptoms of this attitude.

#### **H.R. 1379**

PVA cannot support H.R. 1379 as it is currently proposed. While PVA generally supports modifications to the remand process as it currently exists to allow for more expeditious and accurate resolution of appeals, H.R. 1379 is so vague that we believe it is unworkable. While there may be some advantages to oversight of all remand development by the Board, it will require significant investment of resources to ensure the quality of what is obtained through development is better and results in better decisions. However, it raises significant unanswered questions. The legislation indicates that "The Board may not remand any appeal case to the Veterans Benefits Administration," but does not describe what constitutes a remand. This is a concern because many of the orders from the Board are still going to involve the scheduling and completion of an examination by VBA. Is the process for scheduling examinations, as well as the quality of those examinations, going to be improved? Will the process be adequately funded and staffed? Will there be additional emphasis on private and VA treating evidence? Will the entire SSOC process that the Appeals Management Center/VBA goes through be eliminated? Until these questions are answered PVA cannot offer its support. Additionally, there is an absence of language that directs a pre-

decision review of the case by an appellant's designated Power of Attorney. It will be significantly easier for the Board to shut VSOs out of the process in the name of expediency.

Some of the language from the H.R. 800, the "Express Appeals Act," on the development process is much more clear and this legislation would more appropriately be included in some variation of that legislation with other reforms that improve Compensation and Pension exams, better developed opinions, and more use of private/VA treating evidence on which PVA has previously testified. This legislation has the potential to alter the Board from a decision-making body to an evidence-gathering body.

Perhaps PVA's greatest concern is that it reduces, and almost eliminates, VBA accountability. It allows for errors and poor initial decisions with no penalty or retribution. We already see poor decisions being made, and when remands are sent back to the AMC/Regional Offices, they often return to the Board without the instructions being completed as directed and enter the so-called "hamster wheel." In too many cases, the AMC fails to ensure the specific orders defined by the Veterans Law Judge in his or her opinion are followed and completed. How much worse will it be when VBA can essentially wash their hands of their claims with no repercussions against VBA or incompetent adjudicators who already have minimal accountability when they fail?

### **H.R. 1414, the "Pay As You Rate Act"**

PVA supports H.R. 1414, the "Pay As You Rate Act" with one major concern. It is critical that an interim payment of earned benefits in no way causes the claim to be delayed in any way as it moves toward a final conclusion. It is also important that an interim payment not become the "ceiling" of the claim. The VA may find it easy to grant the "simple" part of a claim to ensure that the veteran is receiving some benefit. This potentially could lead to the granting of a lower claim percentage to move the claim off the table and reduce claims processing numbers.

While PVA like other veterans service organizations is interested in VA providing earned benefits to deserving veterans, we are most concerned with an accurate claim.

Historically there have been too many instances of claims being improperly adjudicated, evidenced by the number of remands VBA receives, and this may lead to a quick fix remedy. Due to the number of veterans who do not have capable representation, a veteran may not even realize that the claim has not been completed, or that it may be lower than they deserve. PVA recommends very aggressive oversight by this subcommittee should this legislation be enacted.

### **H.R. 1569**

PVA supports H.R. 1569 to clarify that the estate of a deceased veteran may receive certain accrued benefits upon the death of a veteran. With the extensive delays VA faces in processing claims, and the anticipated dramatic increase in appeals on the horizon, many veterans will continue to pass away before their claims or appeals are settled. PVA does not believe that the family should be denied benefits that are owed to a veteran for their service and these should be paid to the veteran's estate.

### **H.R. 1607, the "Ruth Moore Act of 2015"**

PVA supports H.R. 1607, the "Ruth Moore Act of 2015." According to reports, sexual assault in the military continues to be a serious problem, despite several actions by the Department of Defense (DOD) to combat the issue, including required soldier and leader training. As the military works to reduce the threat and incident of military sexual trauma (MST), it is important that victims of MST, both women and men, have the ability to receive care from the VA and receive timely, fair consideration of their claims for benefits. This is particularly important given the number of MST occurrences that go unreported. While current policies allowing restricted reporting of sexual assaults should reduce the number of incidents which have "no official record," it can still be anticipated that there are those who will not report the incident out of shame, fear of reprisals or stigma, or actual threats from their attacker. To then place a high burden of proof on the veteran, who has experienced MST to prove service-connection,

particularly in the absence of an official record, would add further trauma to an already tragic event.

One particular recommendation that PVA would like to make about the proposed language is a clarification of what constitutes a “mental health professional.” We would hope that the intent of this legislation is not to limit “mental health professionals” to only VA health care professionals.

Mr. Chairman and members of the Subcommittee, we appreciate your commitment to ensuring that veterans receive the best benefits and health care available. We also appreciate the fact that this Subcommittee has functioned in a generally bipartisan manner over the years. We look forward to working with the Subcommittee as we continue to provide the best care for our veterans.

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

### **Information Required by Rule XI 2(g)(4) of the House of Representatives**

Pursuant to Rule XI 2(g)(4) of the House of Representatives, the following information is provided regarding federal grants and contracts.

#### ***Fiscal Year 2014***

No federal grants or contracts received.

#### ***Fiscal Year 2013***

National Council on Disability — Contract for Services — \$35,000.

### **Disclosure of Foreign Payments**

“Paralyzed Veterans of America is largely supported by donations from the general public. However, in some very rare cases we receive direct donations from foreign nationals. In addition, we receive funding from corporations and foundations which in some cases are U.S. subsidiaries of non-U.S. companies.”

**Blake C. Ortner  
Deputy Government Relations Director  
Paralyzed Veterans of America  
801 18<sup>th</sup> Street NW  
Washington, D.C. 20006  
(202) 416-7684**

Blake Ortner is the Deputy Government Relations Director with Paralyzed Veterans of America (PVA) at PVA's National Office in Washington, D.C. He is responsible for federal legislation and government relations, as well as veterans' budget, benefits and appropriations analysis. He has represented PVA to federal agencies including the Department of Labor, Office of Personnel Management, Department of Defense, HUD and the VA. In addition, he is PVA's representative on issues such as Gulf War Illness and he coordinates issues with other Veteran Service Organizations.

He has served as the Chair for the Subcommittee on Disabled Veterans (SODV) of the President's Committee on the Employment of People with Disabilities (PCEPD) and was a member of the Department of Labor's Advisory Committee on Veterans' Employment and Training (VETS) and the Veterans Organizations Homeless Council (VOHC).

A native of Moorhead, Minnesota, he attended the University of Minnesota in Minneapolis on an Army Reserve Officer Training Corps (ROTC) scholarship. He graduated in 1983 with an International Relations degree and was commissioned as a Regular Army Infantry Second Lieutenant. He was stationed at Ft. Lewis, WA, where he served with the 9<sup>th</sup> Infantry Division and the Army's elite 2<sup>nd</sup> Ranger Battalion. He left active duty in September 1987.

He continues his military service as a Brigadier General in the Virginia Army National Guard and is a 2010 graduate of the US Army War College. From 2001-2002, he served as Chief of Operations - Multi-National Division North for peacekeeping missions in Bosnia-Herzegovina, from 2004-2005 he commanded an Infantry Battalion Task Force in Afghanistan earning 2 Bronze Star Medals, from 2007 to 2008 he served in Iraq as the Chief of Operations - Multi-National Force – Iraq earning a Bronze Star Medal and a Joint Commendation Medal, and from 2011-2012 he commanded a NATO Infantry Brigade Combined Combat Team in Afghanistan earning a Bronze Star Medal and Meritorious Unit Citation. Additional awards include the Legion of Merit, the Combat Infantryman Badge, Combat Action Badge, Ranger Tab, Military Free Fall Parachutist Badge and the Parachutist Badge. He currently serves as the Assistant Division Commander of the 29<sup>th</sup> Infantry Division for the Virginia Army National Guard.

Mr. Ortner resides in Stafford, VA with his wife Kristen, daughter Erika and son Alexander.