ADJUDICATING VA'S MOST COMPLEX DISABILITY CLAIMS: ENSURING QUALITY, ACCURACY AND CONSISTENCY ON COMPLICATED ISSUES

HEARING

BEFORE THE

SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS

OF THE

COMMITTEE ON VETERANS' AFFAIRS
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ADJUDICATING VA'S MOST COMPLEX DISABILITY CLAIMS: ENSURING QUALITY, ACCURACY AND CONSISTENCY ON COMPLICATED ISSUES

Wednesday, December 4, 2013

HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS
COMMITTEE ON VETERANS' AFFAIRS
Washington, D.C.

The subcommittee met, pursuant to notice, at 3:04 p.m., in Room 334, Cannon House Office Building, Hon. Jon Runyan [chairman of the subcommittee] presiding.

OPENING STATEMENT OF CHAIRMAN JON RUNYAN

Present:Representatives Runyan, Lamborn, Bilirakis, Titus, O'Rourke, and Negrete-McLeod.

Also Present: Representatives Miller, and Michaud.

Mr. RUNYAN. Good afternoon, everybody, and welcome. This oversight committee of the Subcommittee on Disability Assistance and Memorial Affairs will now come to order.

Throughout the past year, Members of the subcommittee as well as the full committee have heard from VA representatives on various initiatives that have been instituted in order to fulfill the secretary's goal on disability benefits claims for 2015.

VBA implemented national initiatives within its regional offices including challenge training, quality review teams, skill certification testing, and simplified notification letter and fully developed claims.

VBA also rolled out new technologies in the form of the Veterans Benefits Management System and several other electronic projects, as well as new processing models featuring segmented lanes and cross-functional teams.

All along VBA indicated that significant support and training from VBA central office would be critical in this rollout.

On top of these challenges, in April of 2013, VA announced that all cases pending in excess of one year would be completed by the conclusion of fiscal year 2013.

Based on this new push, VA instituted many months of mandatory overtime for its employees. While there are general concerns on whether VA employees were able to issue decisions of high quality within the expedited time frame, there are also concerns that many of these oldest claims, in fact, were highly complex.

Regional office employees have previously reported that claims processors would pass over difficult cases and would routinely decide to call easy claims first in order to meet the production goals and maximize workload and workload credit parameters.

Thus, it would stand to reason that many of these two-year-old and one-year-old claims decided in the past quarter constitute a challenging workload.

And today we will hear about a focused issue which ties into the VA's various initiatives and which highlights the clear necessity of uniform central office support and thorough employee training.

Today's focus is upon the complex claims that are routed to the special ops lanes at the regional office to include large multi-issue claims as well as traumatic brain injury, posttraumatic stress, military sexual trauma, and claims involving special monthly compensation just to name a few.

While VA reported in November of this year that complex claims which take an excessive time to require special handling or only constitute ten percent of VA's workload, these claims require highly competent, educated, and experienced attention.

Importantly, decisions rendered in these complex claims often have tremendous effect on the lives of these veterans.

Within VA's strategic plan refresh for fiscal year 2011 through fiscal year 2015, the Department of Veterans Affairs noted no fewer than 30 times that VA's strategic plan is results driven, and I quote, "We will be measured by our accomplishments and not our promises."

So today we want to hear accomplishments, what is going on in this high stakes, highly specialized claims processing environment, how has employee training focused upon the development of these issues, and what is working and what is not working.

Also, we want to hear about the focused investigations of the VA's Office of Inspector General who look at specific complicated claims on an annual basis within the regional office, reviews of VA OIG reports, as well as the recent veterans' testimonials are alarming.

In the past four years, at least 19 regional offices have been inspected by the OIG on a second instance. Of those, more than half saw a decrease in the claims processing accuracy with respect to traumatic brain injuries. This means that the reports indicate that VA's OIG's second visit to the ten regional offices evidenced more errors than the initial visit did.

With respect to temporary 100 percent disabled claims, while improvements have been made on half of the offices, inspectors still could not process 50 percent of these claims correctly on their second inspection. There is still no other word for this but unacceptable.

At this time, I would like to welcome our witnesses. We will have three panels here today. Currently seated are the participants of panel one. They include Ms. Lauren Price, United States Navy retired, accompanied by Mr. James Price, who is also United States Navy retired, who are here on behalf of Veteran Warriors.

To Mr. Price's left sits surviving spouse, Ms. Bettye McNutt, accompanied by Mr. Glenn Bergmann, partner at Bergmann Moore, LLC.

After the conclusion of panel one, we will hear from Mr. Sherman Gillums, the associate director for the Veterans Benefits with Paralyzed Veterans of America; Mr. Ronald Abrams, joint executive director for the National Veterans Legal Service Program; and Mr. Zach Hearn, deputy director for Claims with The American Legion.

Finally, the third panel, we will hear from Mr. Tom Murphy, director of Compensation Services with the Veterans Benefits Administration, accompanied by Ms. Edna MacDonald, director of the National Regional Office.

The third panel will also host Ms. Sondra McCauley, deputy assistant inspector general for Audits and Evaluations with Office of the Inspector General, U.S. Department of Veterans Affairs, who will be accompanied by Mr. Brett Arronte, director of San Diego Benefits Inspections Division.

Additionally, the hearing record will include written statements from Disabled American Veterans, the Tragedy Assistance Program for Survivors, and Ms. Sulin Schafer, wife of air force veteran, Errick Schafer.

With those instructions complete, I thank you all for being here today.

I now yield to the ranking member for her opening statement.

OPENING STATEMENT OF THE HON. DINA TITUS, Ranking Minority Member

Ms. TITUS. Well, thank you, Mr. Chairman, and thank you for holding this important hearing.

I would also like to thank the witnesses you mentioned who are here today for their time and trouble to come and share information with us.

First, I want to applaud the VA for reducing the benefits backlog by 34 percent since March of 2013. We hope that the VA can maintain this momentum and we are optimistic. We want to end this decades long backlog and we are moving in that direction.

Our numbers indeed show that the VA is on track to reach the secretary's goal by 2015, so I would ask you to relay a message to the people who work for the VA and tell them thank you for their efforts and to please keep up the good work.

As the VBA continues to work through this transformation, it is very important that we are working together towards solutions that will improve the processes of providing benefits to veterans, benefits that they have earned, and we want them to be provided in the most timely and efficient manner possible.

So we need to be forward looking so we can address the next issues rather than just the problems from the past. We want to be able to anticipate what is coming down the road so we do not create any new backlog issues.

Earlier this year, our subcommittee worked on a package of bills that are forward-looking and I believe would help the VA provide better services to our veterans. The House has passed many of these measures. They were bipartisan measures, and I hope that the Senate will soon take them up and send them on to the President for his signature.

One of the bills specifically was my bill, Pay As You Rate, which I think is appropriate to today's topic as we look at complex cases that have more than one issue involved with them. This bill would require the VA to pay veterans as each of their individual medical conditions is completed.

Such an approach would result in veterans throughout southern Nevada—my district—and the country in receiving their payments in a more timely manner rather than waiting until the entire case is adjudicated which can be very complex. As we will hear, they can get pieces done as they go along.

Additionally, it seems that such an approach would offer the VA better workload management options where some of the best VA regional offices could specialize on those medical conditions which have proven to be more challenging and more complex such as military sexual trauma and traumatic brain injury.

My colleague, Ranking Member Michaud, has introduced a bill that would provide veterans with better decisions in a timely manner by doing just that and look forward to seeing that move forward.

I am proud to say that we seem to be making progress that is reducing the backlog, but there is still some clunkiness in the operations and in the effectiveness or lack of effectiveness.

For example, I am concerned that the VA may be oversimplifying some of the more complicated and complex medical conditions. The VA has essentially broken down the coding system with nearly a thousand different medical conditions and endless variables into just three lanes, easy, medium, and hard.

That seems a pretty simplified way of looking at all of these different variables. And when you define complexity as just the number of medical conditions in a claim, I am not sure that is an adequate way of looking at it.

It is important to note that the number of conditions does not necessarily dictate the complexity of the entire claim. This method of evaluating complexity made sense in a paper processing world. But as we look forward now to best practices, I believe complexities should be measured not just by the number of conditions but rather by the complexity of evaluating and paying for the medical conditions that are under consideration.

It is important that the VA look within the current system across all 56 VA regional offices to determine what are best practices for assigning that complicated work. I believe that the VBA can work with VBMS to broker work from one station to another to ensure that the best employees are working on the most challenging cases.

This subcommittee—and I thank the chairman for his work on this and for his cooperativeness with our side of the aisle—and the VA share a common goal and that is ensuring that our veterans receive the best benefits in a timely fashion.

So I think we can continue to work together as a committee with the VA to develop these tools and best practices. And I look forward to hearing your testimony and seeing what options may be available to us as we move forward.

With that, I yield back. Thank you, Mr. Chairman.

Mr. RUNYAN. Thank you, Ms. Titus.

PREPARED STATEMENT OF THE HON. JON RUNYAN, Chairman

"Adjudicating VA's Most Complex Disability Claims: Ensuring Quality, Accuracy and

Consistency on Complicated Issues."

December 4, 2013

Good afternoon and welcome everyone. This oversight hearing of the Subcommittee on Disability Assistance and Memorial Affairs will now come to order.

Throughout the past year, the Members of this Subcommittee, as well as the Full Committee, have heard from VA representatives on various initiatives that have been instituted in order to fulfill the Secretary's goal on disability benefits claims for 2015.

VBA implemented national initiatives within its regional offices, to including Challenge Training, Quality Review Teams, Skills Certification Testing, Simplified Notification Letter, and Fully Developed Claims.

VBA also rolled out new technologies in the form of the Veteran Benefits Management System and several other electronic projects, as well as a new processing model featuring segmented lanes and cross-functional teams. All along, VBA indicated that significant support and training from VBA central office would be critical in this rollout.

On top of these changes, in April of 2013, VA announced that all cases pending in excess of one year would be completed by the conclusion of Fiscal Year 2013.

Based upon this new push, VA instituted many months of mandatory overtime for its employees.

While there are general concerns on whether VBA employees were able to issue decisions of high-quality within the expedited time-frame, there are also concerns that many of these "oldest-claims" were, in fact, highly complex.

Regional Office employees have previously reported that claims processors would pass over difficult cases, and would routinely decide so called "easy" claims first in order to meet production goals and maximize workload credit parameters. Thus, it would stand to reason that many of these two-year old and one-year old claims, decided in the past quarter, constituted a challenging workload.

And today we will hear about a focused issue, which ties into the VA's various initiatives, and which highlights the clear necessity of uniform Central Office support and thorough employee training . . . today's focus is upon the complex claims that are routed to the special-ops lanes at the Regional Offices, to include large multi-issue claims, as well as traumatic brain injury, post-traumatic stress, military sexual trauma, and claims involving special monthly compensation, just to name a few.

While VA reported in November of this year that complex claims, which take extensive time or require special handling, only constitute 10% of VA's workload, these claims require highly competent, educated, and experienced attention. Importantly, decisions rendered in complex claims often have a tremendous effect upon the lives of these veterans.

Within VA's "Strategic Plan Refresh" for Fiscal Year 2011 through Fiscal Year 2105, the Department of Veterans Affairs

noted no fewer than THIRTY times that VA's strategic plan is "results driven," and I quote, "We will be measured by our accomplishments, not by our promises."

So today, we want to hear accomplishments——what is going on in this high-stakes, highly specialized, claims processing environment? How has employee training focused upon the development of these issues? What is working? What is not working?

Also, we want to hear about the focused investigations of the VA Office of Inspector General, who look at specific complicated claims on an annual basis within the Regional Offices. Reviews of VA OIG reports, as well as recent veteran testimonials, are alarming.

In the past four years, at least nineteen Regional Offices have been inspected by OIG on a second instance. Of those, more than half saw a decrease in claim processing accuracy with respect to Traumatic Brain Injuries . . . This means that the reports indicate that VA OIG's second visit to ten Regional Offices evidenced more errors than the initial visit.

With respect to temporary one-hundred percent disability claims, while improvements were made, half of the offices inspected still could not process 50% of these claims correctly on their second inspection. There is no other word for this, but simply "unacceptable."

At this time, I would like to welcome our witnesses. We will have three panels today.

Currently seated include the participants in Panel One. They include Mrs. Lauren Price, United States Navy, Retired, accompanied by Mr. James Price, also United States Navy, Retired, who are here on behalf of "Veteran Warriors."

To Mr. Price's left sits surviving spouse Ms. Bettye McNutt, accompanied by Mr. Glenn R. Bergmann, Partner at Bergmann & Moore, LLC.

After the conclusion of Panel One, we will hear from Mr. Sherman Gillums, Associate Executive Director for Veterans Benefits with Paralyzed Veterans of America; Mr. Ronald Abrams, Joint Executive Director for the National Veterans Legal Services Program, and Mr. Zach Hearn Deputy Director for Claims with The American Legion.

Finally, in the third Panel we will hear from Mr. Tom Murphy, Director, Compensation Service, with the Veterans Benefits Administration, accompanied by Ms. Edna MacDonald, Director of the Nashville Regional Office.

The third Panel will also host Ms. Sondra F. McCauley, Deputy Assistant Inspector General for Audits and Evaluations with the Office of Inspector General, U.S. Department of Veterans Affairs, who will be accompanied by Mr. Brent Arronte, Director of San Diego Benefits Inspections Division.

Additionally, the hearing record will include written statements from Disabled American Veterans, the Tragedy Assistance Program for Survivors, the Armed Forces Foundation, and Ms. Sulin Schafer, wife of Air Force veteran Errick Schafer.

With those introductions complete, I thank you all for being with us today and I now yield to our Ranking Member for her opening statement.

PREPARED STATEMENT OF DINA TITUS, Ranking Minority Member

Thank you, Mr. Chairman, for holding a hearing on this very important topic. I also want to thank the witnesses for their attendance this morning.

First, I would like to applaud the VA for reducing the benefits backlog by 34 percent since March 2013. We hope that the VA can maintain their momentum and end the decades old backlog. Our numbers show that you are on pace to indeed reach the Secretary's goal by 2015. I ask you to relay this message to the workforce - keep up the good work.

As VBA continues to work through its transformation, it is important that we are working towards solutions that will improve the processes of providing veterans the benefits they have earned, in the most timely and efficient manner possible. We should be forward thinking to address the next issues, not just the problems from the past.

Earlier this year our subcommittee worked on a package of bills that are forward looking and would help the VA provide better services to veterans. The House has passed many of these measures, and I hope the Senate will soon send them to the President for his signature.

Specifically, my bill, the Pay As You Rate Act, would require the VA to pay veterans as each of their individual medical conditions is completed. Such an approach would result in veterans throughout Southern Nevada receiving payments in a timelier manner for their simple medical conditions.

Additionally, it seems that such an approach would offer the VA better workload management options where some of the best VA Regional Offices could specialize on those medical conditions that have proven to be more challenging such as Military Sexual Trauma and Traumatic Brain Injury. My colleague, Ranking Member Michaud, introduced a bill that would provide veterans with better decisions in a timelier manner by doing just this.

While I am proud to say we finally seem to have a system that is reducing the backlog, it is still clunky in its operational effectiveness.

I am concerned that the VA may be oversimplifying some of the more complicated medical conditions. The VA has essentially broken down a coding system with nearly a thousand medical conditions and endless variables into three lanes—easy, medium, and hard. Complexity is usually defined at the VA as the number of medical conditions in a claim.

It is important to note however, that the number of conditions does not necessary dictate the complexity of the entire claim. This method of evaluating complexity made sense in the paper processing world. As we look for best practices, I believe complexity should not be measured by the number of medical conditions in a claim but rather it should be measured by the complexity of evaluating and paying for specific medical conditions.

It is important that the VA look within the current system, across the 56 VA Regional Offices to identify best practices for assigning complicated work. With VBMS, the VBA can instantly

broker work from one station to another to ensure the best employees are working on the most challenging cases.

Our Subcommittee and the VA share a common goal – ensuring that veterans receive the benefits they have received in a timely fashion. I hope we can work together to find the best ways to utilize VBMS and other tools to meet this goal.

Today's hearing will explore these options, and I hope the VA will continue to work with us to implement many of our bipartisan ideas.

I yield back.

And with that, I ask unanimous consent that Chairman Miller and Ranking Member Michaud be able to participate in our hearing today. So hearing no objection, so ordered.

At this time, I would welcome our first panel to the table. Your complete and written statements will be entered into the hearing record.

Mr. and Mrs. Price, thank you for your service and for being here this afternoon.

Ms. Price, you are now recognized for five minutes for your oral testimony.

ORAL STATEMENT OF LAUREN PRICE

Ms. PRICE. Thank you, Chairman.

Chairman Runyan, Ranking Member Titus, members of the panel, Veteran Warriors asked me to express their gratitude for inviting ourselves as delegates to represent their views on the VA's handling of complex claims and the challenges that are faced with those.

Most of this panel has no idea who Veteran Warriors is. It is exactly what it sounds like. We are just a bunch of veterans, but we are specialists that come from a wide variety of fields and professions and bring in some cases decades of experience to the table and to the team. Our purpose is to deal with not just complex claims but with all issues relating to the VA's functions.

In particular, I am a combat vet. I served in the navy for seven years before I was medically retired. I contracted a terminal lung disease in Iraq. I also crushed both of my hands, parts of my hands and had to have my hands rebuilt.

I am a hundred percent disabled. I can no longer work and my life expectancy now is down probably less than two years. My husband is my primary caregiver. I do not need anything from the VA any longer.

My complicated claim took four years to adjudicate. Not once in that four years did I ever present one single piece of new evidence. The entire claim was submitted fully developed in its entirety before I was even discharged from the navy.

I am here not to represent my claim or my issues. My husband and I are here to make sure that this panel and that everyone that will listen to us will understand that cases like my own and unfortunately like Mrs. McNutt's are not isolated.

I personally have dealt with at this time almost 1,000 cases just in the last six months of veterans and their spouses and children

who are dealing with complex claims that are being denied over and over and over again or being low-balled and zero rated.

We are not a VSO. We are not a veteran service organization by any means. Our sole purpose is to work to try to get resolution to the manner in which the VA is conducting business.

However, we are not going to sit here and lie to anybody. We are going to make sure that everyone understands that we do not agree with giving kudos to the VA. Over the last 12 years, the majority of the veterans that have come home and come into the system have filed complex claims. This was not a secret to the VA. They were well aware of what was coming home.

You have a demographic of veterans that have spent multiple deployments, various hostile environments, come home. They are better educated now than they ever have been in history. They are also equipped with technology available that at a moment's notice, they can get information to virtually any question they have regarding their benefits.

The VA pictures this as a disaster waiting to happen because these are the veterans that are filing the complex claims.

On November 7th, Secretary Shinseki took credit for reducing the backlog by one-third since March. We caution this panel and everyone involved with VA claims to don't take that as gospel because there is a big part of the claims processing that they are not telling people.

The most insignificant type of claim is not a medical claim. It is called a dependent status change. You get married. You have a child. You get divorced. Your child ages out. It is one document with one attachment, your marriage certificate, your divorce decree, what have you.

Those go into claims. They are adjudicated right alongside someone who has a terminal lung disease or Agent Orange illnesses. Unfortunately, those claims, and we have been able to prove it to this subcommittee, those are the claims that they are closing and calling closed and adjudicated. And, unfortunately, that does help their numbers come down.

We ask that every time that you get a new report on the VA's numbers you look at it cautiously. You question the data. They are not sending in screen shots of their work product. They are creating reports. There is almost no transparency. No one in this room can just sit down and go look at all the numbers that the VA is working on that are being generated on a daily basis.

Congress has never denied the VA a single penny for doing its job. The current budget, over $54 billion is being paid out to veterans in direct benefits. The balance of their budget that they receive right now is for administration of their business, but they are not doing business properly.

I could sit here for hours and give you statement after statement after statement of egregious behavior, wrongful denials, or in some cases deliberate malfeasance. All we ask is that you continue to press this forward, you consider our mission which is to have a full overhaul of the Veterans Administration, completely reorganizing the way they are doing business, and demanding full and 100 percent accountability and repercussions for their actions.

Thank you again, Mr. Chairman, Ranking Member Titus, esteemed panel. We are extremely grateful for the opportunity to be here today to testify. We would be honored to take any questions from you.

PREPARED STATEMENT OF LAUREN PRICE

Chairman Runyan, Ranking Member Titus, and members of this Panel, VeteranWarriors expresses their gratitude for the opportunity to offer our views on the (Department of Veterans Affairs) - VA's "Most Complex Disability Claims" issues.

The majority of this esteemed panel has never heard of VeteranWarriors. Please allow me to introduce you to our group. We are a very small group of Veterans and supporters, who have decided to be the "David" in taking on the "Goliath" of the Department of Veterans Affairs. Our sole mission is to convince every necessary entity that the VA is broken and in need of a full overhaul, such as the Internal Revenue Service was subjected to in the late 1990's, and assist us in making that reform a reality. We are internally funded and ask nothing for our efforts. However, our efforts to see the VA reformed will continue to press forward, until it is a reality.

Our team has spent five (5) years reviewing every audit, investigation, Congressional testimony and media report, regarding the actions of the VA. We have taken thousands of statements from veterans and their families regarding everything from egregious delays or outright denials of rightfully earned benefits in claims processing to malpractice within the VA Health system. The culminations of that research lead us to create completely new working models of the major sectors of the VA. For obvious reasons, the concentration initially was on Veterans Benefits Administration side.

We were invited here to today to provide our opinion on what could be the best method to assure that the VA processes complex claims, in a timely, accurately and in a consistent manner across the nation. To be brutally honest with this panel, there is currently no process that is in place, which will comply with those parameters.

To illustrate the dysfunction within the category of complicated claims, we provide an analogy;

You have a five year old desktop computer. It has a monitor, keyboard, mouse and a hard drive. For the last year, your computer will only come on about 50% of the time. You monitor works as does the keyboard and mouse – just the hard drive won't boot up. You have had the "Geek Squad" look at, you have taken it apart, you have sent it to the manufacturer; every single person has told you that it is broken beyond repair and to buy a new computer. Instead of buying a new one, you buy a new monitor, you buy a new keyboard then you buy a new mouse. But your computer STILL only comes on 50% of the time.

When is Congress going to buy a new computer? When are we going to force an overhaul of the VA?

This analogy illustrates what is happening between Congress and the VA. For over thirty (30) years, the Government Account-

ability Office (GAO), the VA – Office of Inspector General (VA–OIG), the American Federation of Government Employees (AFGE) as well as countless Veterans Service Organizations (VSO) and veterans have testified, complained, reported to the media and asked for Congressional intervention regarding the absolute abysmal dysfunction that is the manner of doing business for the VA.

To be clear, the term "dysfunction" is defined by Encarta Dictionary (and VeteranWarriors regarding the VA), to be, "An irregularity in the functioning of any part or system, (and) a characteristic of dysfunction of petty officialdom".

Every veteran in this nation owes gratitude to the Veterans Service Organizations (VSO), for their ongoing efforts to assist with their claims and right the wrongs regarding VA decisions. As well as their continued presence here on Capitol Hill, representing them, in what the VSO's believe to be the best interests of the veterans.

However, VeteranWarriors is not officially a VSO. We never intend to be one. We will always do everything in our power to help a veteran or a family who reaches out to us. Our goal is not to placate or appease anyone, be it Congress, the officials of the VA or a VSO. We offer no apologies for our views on the actions of the VA. In other words, we are not here to lie to Congress and tell you everything is looking up and the VA is getting better at doing their ONLY mission. Unlike the VSO's who have testified before us, we offer no kudos to any sector of the VA. In fact, we are here to tell you the plain truth – that the VA is irrevocably broken and the only way that all of the issues which Congress has repeatedly attempted to address, will be fixed, is by a forced overhaul based on VeteranWarriors new models.

To address the purpose of this hearing, VeteranWarriors has reviewed current staffing, equipment, and financial resources that the VA is allocating to claims processing. The VA provides no specific information as to the resources dedicated to handling complex claims. We could find no official definition of complex claims or any numerical breakout regarding the handling of these claims. What we have found is that everyone from Undersecretary Hickey to the VSO's has placed the blame for a large part of the backlog on the complex claims. Our lay understanding of a "complex claim is a claim which has more than 2 or 3 issues claimed by the veteran.

For clarity, the lion's shares of veterans coming into the system over the last 12 years have "complex" claims. When you have a demographic of veterans whose last decade has been spent with multiple deployments to various hostile environments, better educated veterans who know what their rights are and an age of technology whereby the veteran can readily obtain information, you have a recipe for what the VA considers to be disaster.

The VA maintains that it is making headway in reducing the backlog of claims in its inventory. As recently as November 7, 2013, Secretary Shinseki took credit for reducing the backlog by over one-third since March 2013. What is being kept quiet, what is the dirty secret is that a disproportionate number of the complex claims are still awaiting adjudication or have been "closed" awarding the veteran a nominal rating on one or more of the minor issues. The primary issues the veterans are claiming are being either "ZERO

rated" or denied outright. The claims which the VA suggests are closed are the "simple" claims, ones with one or two issues. What the VA also does not share is how certain claims are classified thus significantly affecting the VA's reported numbers, to the VA's benefit.

This panel must understand an important delineator when reading reports of the VA's successes. The VA considers ANY type of claim that they have adjudicated and replied to the veteran as "CLOSED". The important fact to remember is that 75% of the claims that are making their way to the Board of Veterans Affairs Appeals court are remanded for correction. These claims are only a small portion of the totality of claims decided by the VA. Too many veterans give up and refuse to keep fighting. So when the VA tells you they "closed a claim", it is imperative that the one be highly suspicious of the source of the data for the statement.

One type of "claim" that the VA has used to reduce the backlog is "Dependent Status Update" claims. Getting married, got divorced, had a child, child ages out but then goes to college – these are all factors that are adjudicated under the "CLAIMS" category. Of course it would be really easy to profess success if you just got these claims adjudicated. The VA did this with one of our group – After a year of sitting without action, the VA finally adjudicated his claim for getting married. It took almost exactly one year after he filed the "FULLY DEVELOPED CLAIM" to add a dependent.

Meanwhile, a veteran whose "complex" claim – filed while still on active duty and in compliance under the "Pre-Discharge" (formerly known as the Benefits Delivery at Discharge program), took four (4) years to adjudicate. That particular program was instituted jointly by the VA and the Department of Defense (DoD) to " ... minimize the waiting time for veterans to receive benefits and services ... " because the VA professes when filed before the member leaves active duty, the claimed issues are considered automatically "service-connected". The veteran was forced to file four (4) Notice of Disagreements, a Formal Appeal (which the VA re-characterized as a Notice of Disagreement) and a second Appeal, which resulted in a Decision Review hearing. At which time, the officer awarded the veteran all the claimed issues retroactive to the end of active duty. However, the veteran still has not received Special Monthly Compensation even though all the claimed issues had transpired while serving as a convoy driver in Iraq for a year.

Another Iraq combat veteran, has been denied for all "automatically service- connected issues", from day one. He filed his claim upon discharge from the military in 2009 and to date, has been denied for every issue claimed, in spite of mountains of medical evidence which include the VA's own records. He is now being forced to file a Formal Appeal in the hope of every seeing any of his earned benefits.

We could spend the rest of this panel's time on the Hill this year, extrapolating on the thousands of cases which have come to our attention. We will not waste your valuable time by doing so.

The issue of "complex claims" is the new reality for the VA. However, the VA refuses to adjust fire and accept it, manage it correctly, adjudicate them correctly and efficiently or even entertain the idea that their way of doing business with their sole customer

does not work. From the Secretary down to the lowliest janitor, no one is being held accountable, no one is accepting responsibility, no one is forcing the rank and file to abide by the laws, rules and policies that exist in managing these complex claims. Instead, the VA finds ways to manipulate the numbers, sugar-coat the malfeasance and explain away the $100 billion dollars per year it spends on administration of its business.

Congress has never denied the VA any money for doing their job. But like a spoiled child, even getting what they want for every "pilot program", new "initiative", increased manpower or bright and shiny new technology, they still want more without giving up anything. The VA does not have any "transparency" whatsoever. The veteran is forbidden from speaking with claims adjusters. The VA does not provide "screen shots" of their work product. Rather, they employ people whose sole purpose is to create reports that make the VA look good to Congress and the media.

VeteranWarriors has developed a viciously more efficient, streamlined model of processing these "complex" claims, utilizing the resources the VA already has on board. No new money, resources, manpower or laws are needed to make proper adjudication of all claims, especially the complex ones, a reality.

OUR proposed reality is one which provides for every veteran of every era, most especially those with complex claims. It is the right of every veterans claim to receive efficient, accurate and professionally managed benefits and services. This reality needs the support of every Congressional leader across the aisle today. So are we going to continue to ignore every expert that tells us the computer is broken and continue to throw good money after bad, or are we ready to buy a new computer . . . Are you ready to overhaul the VA?

Thank you again Mr. Chairman, Ranking Member Titus and esteemed panel. We are truly grateful for the opportunity to present our opinions to you today. VeteranWarriors is humbled by the Congressional commitment and dedication to our veterans. VeteranWarriors would be honored to answer any questions by the panel for the record.

Executive Summary

The mission of VeteranWarriors is to be the catalyst which forces the necessary changes to the manner in which the Department of Veterans Affairs does business with its only customers...the United States Veteran.

The VeteranWarriors testimony today, with regard to the manner by which the Department of Veterans Affairs manages complex claim, will introduce our position to Congressional leaders and provide clarity regarding Veterans Affairs practices and disciplines which are in our opinion, contradictory to the mission statement and very purpose of the Department of Veterans Affairs.

VeteranWarriors' primary areas of concern and recommendations remain static;

* That complex claims are the standard rather than the exception and the VA has steadfastly refused to accept that these are the standard types of claims that veterans will submit now and continuing into the future.

* That complex claims are being pushed to the "back burner" in favor of "simple claims" in an effort to appease Congressional mandates, media pressure and veterans concerns.

* That the VA Regional processing offices are foregoing handling complex claims in an effort to meet statistical requirements set out by the Secretary of the VA, as well as entice employees by creating a method to receive financial remuneration for the volume of claims "Closed", rather than focusing on accuracy and timeliness.

* That Congressional leaders discontinue hearings, audits and investigations into the multiple issues of malfeasance, incompetence and dereliction of duty regarding the VA's handling of claims, in particular complex claims that have been going on for decades.

* For Congress to discontinue accepting the officials from the Department of Veterans Affairs manipulated data as factual, in the face of incontrovertible evidence to the contrary, especially without sworn testimony by the VA officials.

* The recommendations to the panel include a complete overhaul of the Department of Veterans Affairs, specifically utilizing VeteranWarriors efficiency model.

* Having identified the multiple methods by which the VA manipulates data presented, VeteranWarriors suggests that Congress has no other clear and present duty but to demand a full overhaul of the Department of Veterans Affairs.

Mr. RUNYAN. Thank you, Ms. Price.

And now we will hear from Ms. McNutt. Please begin your statement when you are ready.

ORAL STATEMENT OF BETTYE MCNUTT

Ms. MCNUTT. Thank you, Mr. Chairman, for holding today's hearing on——

Mr. RUNYAN. Do you have the microphone on?

Ms. MCNUTT. —complex VA claims. My name is Bettye McNutt. I am the widow of Ronald Adrian McNutt, Vietnam War veteran. Accompanying me today is my attorney, Mr. Bergmann, of Bergmann & Moore.

The Subcommittee on Disability Assistance and Memorial Affairs invited me here today to discuss what has become my most complex and now 23-year-old claim for VA dependency and indemnity compensation.

I am here for two reasons. First, I am here seeking justice for myself and for my family. I ask VA to correctly and promptly apply the law and grant my claim. Second, I am seeking justice for other widows and orphans of our Vietnam War veterans.

In the audience today is my son who lost his father and his best friend when he was 12. Also in attendance today is my niece, Sandra Peterson, who is the daughter of a Vietnam War veteran who also died from Agent Orange poisoning.

Mr. Chairman, I filed my claim in 1990. This same claim remains pending. I have waited 8,600 days of VA delays and denials. VA erroneously denied my claim seven times. For nearly 12 years, my claim sat idle at VA because VA did not respond to my notice of disagreement.

The Court of Appeals for Veterans Claims returned my claim to VA three times based on errors, errors conceded by the VA. I know that VA is waiting for me to die. Without immediate attention, my claim is destined to sit idle for several more years as I wait, hope, and pray for a resolution.

My late husband, Ronnie, was born in Memphis, Tennessee on December the 31st, 1947. As a 19-year-old college student, he was drafted into the U.S. Army. Ronnie was deployed to the Vietnam War in 1968 and 1969.

On September the 22nd, 1987 at the early age of 39, he died from an aggressive form of cancer leaving me a widow with a young son. His death came quickly from a cancer that invaded many parts of his body very rapidly. Ronnie died within five months.

I brought a picture today of my Ronnie because this hearing today is honestly about my Ronnie. He died because of the Vietnam War and his service to his country.

On his death bed, he told me about how he swam in rivers highly contaminated with Agent Orange. Ronnie told me stories about using discarded Agent Orange barrels for barbecue pits.

First, VA has not contested that my husband served on the ground in Vietnam. Second, the law presumes veterans on the ground in Vietnam were exposed to Agent Orange. And, third, a medical expert provided the VA with two nexus medical opinions concluding that Ronnie's cancer was as likely as not due to his exposure to Agent Orange in Vietnam.

VA's Jackson, Mississippi regional office made many, many mistakes. First, on more than one occasion, the VA applied the wrong legal standards to decide my claim. Second, VA ignored favorable medical evidence to my claim. And, third, the VA sought evidence to deny my claim.

A lot was taken away from me 26 years ago and I have done the best that I knew how as a widow to provide for my son, Brandon. The impact of my husband's death on my son was tremendous. Words cannot tell you. I have had emotional, physical, and financial distress. For me, I have suffered unimaginable grief from Ronnie's death. For 8,600 days, words cannot express my suffering.

Going without my VA benefits has meant coming home different occasions to a very cold and dark house because my utilities were turned off. It has meant receiving food and clothing from strangers as I sometimes came up short. It has meant begging for mercy as a repo man stands in my driveway at two o'clock in the morning to take my car.

In conclusion, the VA's mistakes and their delays involve more than just me. It is not about just Bettye McNutt. There are many Bettye NcNutts out there.

Congress passed a law mandating that VA expeditiously process appeals like mine. However, VA routinely ignores this law. Now is the time for Congress to put teeth into that law so other widows like myself can get accurate and prompt decisions on their VA claims.

Mr. Chairman, no one should have to go through that for 8,600 days. Thank you for listening to me.

PREPARED STATEMENT OF BETTYE MCNUTT

Statement for the Record
Bettye B. McNutt
Surviving Spouse of Vietnam War Veteran Ronald A. McNutt
Before the Subcommittee on Disability Assistance and Memorial Affairs
Committee on Veterans' Affairs
U. S. House of Representatives
Regarding
"Adjudicating VA's Most Complex Disability Claims:
Ensuring Quality, Accuracy and Consistency on Complicated Issues"
December 4, 2013
Introduction

Thank you Chairman Jon Runyan and Ranking Member Dina Titus for holding today's hearing about "Adjudicating VA's Most Complex Disability Claims: Ensuring Quality, Accuracy and Consistency on Complicated Issues."

My name is Bettye B. McNutt, and I am the widow of Vietnam War Veteran Ronald A. McNutt. Accompanying me is my attorney handling my claim, Glenn R. Bergmann, a partner of Bergmann & Moore based in Bethesda, Maryland.

I am honored to be here to testify before the Committee on Veterans' Affairs. The Subcommittee on Disability and Memorial Affairs invited me here today to discuss what has become a complex and now 23-year old claim for Dependency and Indemnity Compensation (DIC).

DIC is a benefit provided by the U.S. Department of Veterans Affairs (VA) for surviving family members when a Veteran dies of a service-connected medical condition.

I am here for two reasons. First, I am here seeking justice for myself and my family. I ask VA to correctly and promptly apply the law and grant my claim. I have waited eight thousand six hundred days too long. Without immediate intervention, my claim is destined to remain open for several more years as I wait, hoping and praying for VA to properly decide my claim. Because of VA's frequent mistakes, I have been forced to live in poverty sometimes without heat and electricity as a widow raising a son orphaned by the Vietnam War.

Second, I am here seeking justice for the other widows and orphans of our Vietnam War veterans, as I am well aware that there are many like me. In the audience today is my son, Brandon, and my niece, Sandra Peterson. She is the daughter of a Vietnam War veteran who also died from Agent Orange poisoning. Widows and their families should not be subjected to decades of delay. Sadly when faced with a denial most people give up. I think VA knows this. VA must quickly grant the worthy claims of other widows and orphans. VA must follow the law.

The unnecessary waiting must end now, for me and for the many hundreds of other widows and orphans coping with the loss of a loved one due to cancers associated with exposure to Agent Orange during the Vietnam War.

Ronald A. McNutt, 1947 - 1987

My late husband Ronnie was born in Memphis, Tennessee on December 31, 1947. As a 19-year old college student, he was drafted into the U.S. Army as an infantryman. Ronnie served honorably between November 16, 1967, and June 19, 1969. Ronnie deployed to the Vietnam War from April 30, 1968, to June 16, 1969. On September 22, 1987, at the early age of 39, he died from an aggressive form of cancer, leaving me a widow with a young son. His death came quickly from a cancer that invaded many parts of his body. Ronnie died within five months of his first diagnosis of cancer.

I brought two pictures of my Ronnie with me today because this hearing is about my husband. He died because of the Vietnam War and his service to our country. On his death bed, just weeks before he died, he told me about how he swam in waters highly contaminated with Agent Orange. He told stories about using discarded Agent Orange barrels as makeshift barbeques. There is no doubt in my mind and in my doctor's professional opinion that the dioxin poison in Agent Orange killed my Ronnie.

I am here because our nation makes a solemn commitment to the families of our Veterans. At the west end of the Washington Mall, inside the Lincoln Memorial, are these important words:

With malice toward none, with charity for all, with firmness in the right as God gives us to see the right, let us strive on to finish the work we are in, to bind up the nation's wounds, to care for him who shall have borne the battle and for his widow and his orphan, to do all which may achieve and cherish a just and lasting peace among ourselves and with all nations.

One phrase from President Abraham Lincoln is memorialized on a plaque on the front of the VA central office one block from the White House here in Washington, DC:

... to care for him who shall have borne the battle and for his widow and his orphan.

Request to VA

I am here today seeking justice in my husband's name, as VA appears to have forgotten the second part of the phrase, "for his widow and his orphan." VA is not doing the job the American people expect and our Veterans' families deserve.

This claim has become complex despite the fact that I have satisfied all the legal requirements for DIC benefits. First, VA has not contested that my husband deployed to the Vietnam War, as shown by his discharge papers. Second, the law presumes Veterans deployed to the Vietnam War were exposed to Agent Orange. And, third, a medical expert provided VA with a "nexus" medical opinion concluding Ronnie's cancer was "as likely as not" due to exposure to Agent Orange during his deployment to Vietnam.

Complex Claim

I originally filed my claim with the Jackson, Mississippi VA Regional Office on May 19, 1990. My DIC claim is difficult because it deals with Agent Orange on a direct basis. At one point, VA deferred (although probably lost) my claim for nearly 12 years, from 1994 to 2006, apparently waiting on new research about the harmful effects of Agent Orange. I believe VA lost or simply forgot to process my claim until I reminded the agency about it in 2006.

However, VA needlessly made my claim far more complex. VA gave contradictory reasons for denial; applied the wrong legal

standard; ignored evidence favorable to my claim; and sought evidence to deny my claim.

In summary, during my 23 year battle to obtain VA benefits, VA improperly denied my claim seven times. Despite the fact that my DIC claim was returned by the Court of Appeals for Veterans Claims (Court) three times based on VA errors, VA still refuses to follow the law and science and grant my claim.

My letters to the President and Congress are simply referred back to VA without action by VA. I feel that VA is waiting for me to die.

VA Errors

My 23 years fighting for justice is complicated and lengthy. I provided the Subcommittee with a detailed chronology which appears at the end of my statement.

In summary, VA has made six significant mistakes on my claim. As a result, my claim now sits once again at the Board of Veterans' Appeals (Board) awaiting adjudication yet again here in Washington, DC. Here are the most salient facts regarding VA's chronic errors.

1.VA's first error: VA did not issue a Statement of the Case. On May 19, 1990, I filed my claim at the Jackson, Mississippi regional office. On December 10, 1990, VA improperly denied my claim. On February 7, 1991, I filed a timely Notice of Disagreement (NOD) to begin the appeal process. On November 16, 1994, VA issued a second rating decision. However, VA never issued a Statement of the Case in response to my original NOD, thus leaving my claim open and unadjudicated.

2.VA's second error: In response to a letter I wrote to VA on February 17, 2006, VA incorrectly considered my letter as a request to reopen my claim, even though my claim remained open and unadjudicated since 1990. Despite this, on June 3, 2006, VA denied my claim on the grounds I did not provide new and material evidence.

3.VA's third error: On June 3, 2006, VA approved a death pension, even though I didn't apply for it. I returned the check they sent me because it was incorrect.

4.VA's fourth error: On August 4, 2009, the Board incorrectly denied my claim because it found that Ronnie's cancer was not on the list of presumptive diseases associated with Agent Orange exposure.

5.VA's fifth error: On March 4, 2011, despite the existence of a favorable medical opinion by Dr. Carey that found a causal link between my husband's death and exposure to Agent Orange in Vietnam, the Board again denied the claim because my husband's cancer was not the type of cancer on the list of presumptive diseases associated with Agent Orange exposure.

6.VA's sixth error: In a March 2012 letter to the Chief of Staff at the VA Medical Center in West Virginia, the Board declared the private medical opinion which it had previously stated it had "no reason to doubt" was contradictory and ordered its own independent medical expert opinion. Relying on an outdated Institute of Medicine (IOM) study, the ensuing VA opinion found that there was a less than 50% probability that my husband's cancer was the result of in-service herbicide exposure.

7. VA's seventh error: In September 2012, the Board denied my claim again finding the VA medical opinion more probative than the private medical opinion, despite a follow-up medical opinion refuting the VA examiner's findings and a written brief submission by my attorneys on August 6, 2012.

I am upset at VA's behavior because VA appears to be opposing me at every turn. VA can easily grant my claim right now if they reviewed the evidence of record and correctly applied the law. This is not a difficult claim, but VA has made it complex. VA denied my claim for 23 unbearable years based on conflicting reasons. If VA follows the law and stops their seeming effort to undermine my claim, it will be granted as I have satisfied all the requirements DIC.

Hardship

As noted above, I commenced this claim some 23 years ago. VA has provided inconsistent reasons for denying my claim which continues to cause me enormous frustration and hardship.

The impact on my son Brandon was tremendous. He lost his father at the age of 12. Ronnie's death upended Brandon's young life. He started failing in school, suffered from nightmares, and severe nervousness which resulted in ridicule by teachers and students because of the change in his behavior. His dad did not see him graduate from high school, attend his prom, or be there to mentor him as a good father.

For me, I've suffered unimaginable emotional grief from Ronnie's death. I've done the best I can as a widow to provide for my son. Despite the fact that I worked, my son and I experienced severe economic hardship. We simply learned to do without for a very long time. There were times when we did not have enough food. We learned to rely on friends and even strangers to provide simple groceries. I would sometimes come home in the dark to a house that had no heat or electricity because I could not afford to pay the bills.

It sickens my heart that VA simply does not follow the law or science. My claim should have been granted decades ago.

8,600 Days

In conclusion, I seek justice for my husband Ronald who died from cancer due to Agent Orange poisoning. I ask VA to grant my DIC claim. I have waited eight thousand six hundred days too long.

For the other widows and orphans of Vietnam War veterans who died due to Agent Orange, I ask VA to improve training so that VA employees follow the law, consider favorable evidence, and stop trying to find reasons to deny claims.

This is not just about me. In 2003, Congress passed a law mandating that VA expeditiously process appeals like mine. However, VA routinely ignores this law. Today, VA's "expeditious" treatment equates to at least four more years of additional delay.

I wish Congress would put teeth into that law so the thousands of other widows and Veterans get accurate and prompt decisions on their VA appeals.

Thank you again for this opportunity to appear here today. I will gladly answer your questions.

Mr. RUNYAN. Thank you for your testimony.

And both, Ms. McNutt and Ms. Price, thank you for being here and putting your personal view to all of us.

We will start with a round of questions. I know the clocks are not up, but we will be able to see it from this end. So to get moving in a timely manner, the first question is for Ms. McNutt.

Talking about this process and moving it forward with—you are accompanied by your attorney, Mr. Bergmann, here. Could you tell us about when you decided to engage in counsel and how that has helped you to get to where we are today in this process because like you just kind of alluded to, there are many, many other people out there in the same situation?

Ms. MCNUTT. Well, as I said, I was introduced to Agent Orange on his death bed. And after his death, that was forever in the front of my mind.

So I proceeded without any help, without any direction. I started researching the chemicals in Vietnam. I read an article in a newspaper and it was talking about Agent Orange. And I filed a claim in 1990.

Most of these were just, as I said, stumbling in the dark grasping. But as I went along, the more I learned and the more I felt it was something that I had to do because my husband told me about this on his death bed for a reason which at the time I did not understand.

Mr. RUNYAN. Can you give a little insight, though, on how counsel——

Ms. MCNUTT. After 20 years of groping in the darkness and dealing with the VA and all their errors, I prayed. I asked for help. And one day I received a call from the Vietnam Veterans of America and I was told that I might want to seek counsel.

I went online and I found Mr. Bergmann. And I decided this is going to be the person that is going to help me. This is who I want to represent me.

Mr. RUNYAN. Mr. Bergmann, can you elaborate a little on what you have done to expedite the process, if you will?

Mr. BERGMANN. Certainly. Thank you.

As Mrs. McNutt has indicated, she commenced her claim in 1990 and her claim sat for over 12 years. When we came on her case—as former VA counsel, my job once I left VA's employ—our job as attorneys is always to connect the dots, to make sure that the evidence that is needed to satisfy the requirements is presented to VA.

VA is supposed to in a non-adversarial posture, paternalistic posture, to give notice to veterans and widows and they routinely do not do that.

So what we did in Ms. McNutt's case is we assisted in getting the medical evidence which was not difficult. Her husband had a very aggressive form of cancer at the age of 39. And we put the evidence together with our arguments and submitted it to VA. And, you know, we can do all we can to dot our Is, cross our Ts, but we cannot make VA properly apply the law.

And we have been up to the U.S. Court of Appeals for Veterans Claims three times and each time, a VA attorney will trot forward and say, you know, we made a mistake, this case needs to go back. That does not help Mrs. McNutt, but we are hopeful that—despite 23 years—we are hopeful we are near the end.

Some of the help that we get along the way, obviously the Veterans Choice Act of 2006 has been helpful in allowing attorneys early access to assisting veterans and widows.

Mr. RUNYAN. Thank you.

And one question for Ms. Price. From all the testimonials you have taken from veterans on a national scale, what are the most frequent errors you have heard of in the process?

Ms. PRICE. Not necessarily in any ranking order, Chairman, but most specifically as counsel, Mr. Bergmann, said failure to apply the law correctly, complete disregard of medical evidence provided, most specifically from civilian providers. That is very high on the list.

And the third one, and this rides to the top pretty regularly, is the almost complete and utter disregard for anything that is considered a policy, rule, regulation, or law. The raters seem completely incapable of rudimentary reading of their own policy.

I have a very specific one in my case. The secretary sent down a policy change, an order directly to the regional offices with regard to those of us exposed to burn pits in Iraq and Afghanistan April 26th of 2010.

That application of that policy change has, to the best of my knowledge, not been addressed once in the almost 5,000 victims I know personally.

Mr. RUNYAN. Thank you.

And with that, I yield to the ranking member for her questions.

Ms. TITUS. Thank you.

And thank you both for your testimony. You are very courageous to come and we appreciate your willingness to share your stories. We do not want to see anybody else have to go through what you have.

I understand the general dissatisfaction and the desire to make the VA follow the law and to overhaul the way they do business, but can you tell us just one, just start with one specific thing, and I would ask both Ms. McNutt and Ms. Price, one thing that could do through legislation that would make the process work better because that is what we have to work with.

How can we change the law or how can we change the policy in a specific way that would improve circumstances?

Ms. Price.

Ms. PRICE. Yes, ma'am. I have a very specific answer for you.

Ms. TITUS. Okay.

Ms. PRICE. You could create a law that essentially orders the secretary to establish a complete set of repercussions and an oversight agency that has the ability and the authority to dish out those repercussions, that when malfeasance, deliberate especially, is shown on the part of a rating official, on the part of a case manager, on the part of a healthcare provider, that those people can be terminated, that those people can suffer the repercussions like any civilian would for doing their job poorly or deliberately not doing their job the way it is supposed to be done.

Ms. TITUS. And I would ask the attorney if somebody is guilty of malfeasance in doing their job, aren't there already in place some ways to go after that person? You were a VA attorney; is that correct?

Mr. BERGMANN. Are you talking about the VA?

Ms. TITUS. I am talking about in response to what Ms. Price just said.

Mr. BERGMANN. I do not deal much with malfeasance issues. What I deal with, Ranking Member Titus, is appeals where each case that comes down from the court has language citing to the law, Title 38, Section 7112 that says this case will be given expeditious treatment.

Now, and I realize I am not being responsive to your question——

Ms. TITUS. I can ask the VA for some of that information. I appreciate that suggestion.

Ms. McNutt.

Ms. MCNUTT. There has got to be someone somewhere that has the total authority in making sure that the training—they say there is lack of training, lack of technology. I do not understand that. If I acted in those ways, I would have been fired.

But I think stronger force should be put on them to enforce the law by putting someone in place or maybe more than one person that would oversee that this law is enforced, that it is a serious matter and that something has got to change.

And I am with her. If you cannot perform the job, find another job.

Ms. TITUS. Thank you, Mr. Chairman.

Mr. RUNYAN. I thank the gentle lady.

With that, I recognize Mr. Lamborn.

Mr. LAMBORN. Thank you, Mr. Chairman, and thank you for having this hearing.

And thank you all for being here.

And I want to build on what the ranking member just asked. Mr. Bergmann, you have been on both sides now legally with your employment previously and what you do now.

Do you have any advice or guidance you would give this committee on how the VA could work its claims process better?

Mr. BERGMANN. I guess the advice I would give, sir, is that there be accountability. What I see is a lack of accountability at the agency level where we are not supposed to be on opposite sides of the aisle.

VA will not talk to us. If we do get someone on the telephone, they will ask us how we got their number. We get differing responses each time. We cannot handle many cases at the agency level sometimes because we do not know where our file is because we get different responses to that.

So I think if we can hold the folks who are deciding these claims accountable, that would help veterans and widows and their counsel in expediting the process.

Mr. LAMBORN. Accountability, that is a great thing to bring to our attention. Training and incentives, do you have any advice in those areas?

Mr. BERGMANN. As Mrs. Price talked about, she indicated her concern that it seemed like that some VA ratros decision makers but only 20 percent do not follow simple guidelines. Absolutely training is key.

I think the VA's OIG report of last year indicated that, and I may be misquoting and I think the OIG is going to provide a report later today, but only 20 percent of their ratros decision makers are properly trained. That means 80 percent are under-trained. These are people who are deciding our veterans' disability claims. This is not acceptable.

Mr. LAMBORN. Okay. Thank you.

Mrs. Price, I want to thank you for your service.

And, Ms. McNutt, I want to thank you for your husband's service.

Mr. Chairman, I yield back.

Mr. RUNYAN. I thank the gentleman.

With that, I recognize Mr. O'Rourke.

Mr. *O'Rourke.* Thank you, Mr. Chair. And I would also like to thank the chairman for organizing today's hearing in the manner in which he has organized it.

Very often we will hear from representatives from the VA and then afterwards perhaps hear from VSOs or others who are impacted. I like this order because I am really looking forward to hearing the VA's response to the issues that you brought up.

And the word that we keep hearing over and over again is accountability. And to use your word, Ms. Price, repercussions. We want to see how that accountability is implemented and what the consequences are when someone does not do their job properly or when there is the case of malfeasance or someone who is working against the interest of the veterans that they are supposed to serve, we want to know what the consequences are specifically.

And I think you raised a great point. One hit home with me and it sounds like with the rest of the committee.

And, Ms. McNutt, as I said earlier when I had a chance to meet you before the hearing began, I commend you on your courage in being here. I hope that your story helps galvanize the VA, you know, one, to resolve your claim which has taken far too long already, but also to serve as the added inducement to ensure that no one else is suffering what you have been through and to bring stories like yours to our attention as an oversight committee and body and to the attention of the VA.

So really appreciate your service, Ms. Price, and through you, Ms. McNutt, your husband's service and your support of him and his legacy and memory and both of you, your reference on behalf of other veterans and veterans' families who are suffering these same kinds of problems.

So I really do not have any questions. I will reserve those questions for the VA based on the issues that you brought up. I just want to let you know that your stories have hit home and I really do think they are going to have their intended effect of changing the culture and adding additional power to our ability to exercise oversight over the VA. So thank you.

Mr. Chair, I yield back.

Mr. RUNYAN. I thank the gentleman.

And the chair now recognizes Mr. Bilirakis.

Mr. BILIRAKIS. Thank you, Mr. Chairman, and I appreciate you holding this hearing, a very important hearing.

And I appreciate the testimony. Mrs. Price, who I know pretty well, we worked together over the years on VA issues. And, Mrs. McNutt, thank you for your courage and I know you will make a difference for others.

And I really appreciate so very much for both of you testifying today.

Mrs. Price, first of all, thank you for your service as well. Thank you for testifying, and I want to ask you a couple questions if that is okay.

You have met with me over the years on particular cases, and I really appreciate it, and you worked with my district office as well to help our true American heroes, our veterans.

I have a question with regard to, again, give—can you explain, elaborate a little bit on your particular case, the experiences that you had over the years? I think that would be helpful to the committee as well, if you will.

Ms. PRICE. Thank you, Congressman.

It has actually been my honor and privilege to work with you over the last few years, in particular for other veterans' issues. I know you are extremely supportive of all of us that have come home whether we need VA services or not.

But to answer your question, when I got home, I was still on active duty. I was stationed at SATCOM and I was sick and I was injured. And I went through the medical board process and it took—by the time we completely finished, it took about 10, 11 months for me to get through my board process.

But I stayed on active duty for 18 months total. And my first rating from the VA came in and it said you have 30 percent. There is a rule in place called the DeLuca criteria that has been around for decades based on a court case. It has to do with every single one of us that has bilateral appendage injuries, arms, legs, ears, eyes, anything you got two of.

Up until the time I had a DRO hearing, I had it appeared to be the same case manager. Because I am an English aficionado and the method in which the way the person wrote letters to me, the verbiage the person used seemed to be the exact same person every time.

The raw rating on my hands is 230 percent and that is a big number, but they have a very algebraic method of using cumulative math. Both of my hands, I had the bones removed and my tendons rerouted so that I could actually even hold this. I cannot tie my shoes. I cannot button buttons. I cannot do zip lock bags, all kinds of things.

My last surgery was while I was still on active duty. I also contracted this lung disease.

When I sent all of this information in including some very elaborate ratings on my hands, the testing that took five hours, the first letter that came back to me was telling me that the amputation rule did not apply to me which is a very basic rule that the VA has.

When you hit a certain calculation level, we just said, okay, we are done. You know, we are too high up. Now you just go over and use the amputation rule and you treat it as loss of use or loss of the limb. Said you did not lose your hands, what makes you think you get to use the amputation rule.

I had essentially that same answer all three appeals. My lungs they told me I did not, both my lungs and my hands, they told me I did not qualify for combat-related or SMC.

I was a convoy driver. I have over 350 missions. I drove Humvees. I drove LNTVs. I even drove an Iraqi city bus in downtown Baghdad. And I provided all of that information in my case, pictures taken by combat cameras of me driving. They still denied me over and over and over again.

I have PTSD for a variety of reasons up to and including being a combat driver. When I filed the claim, they denied me right away, immediately. They said you do not have it. Our evaluator said that you must have had a bad childhood. No, actually, I did not. My childhood was not terrible. It was not great. I was a kid. But it had to do with the issues that happened over there.

And I was being treated by their own psychiatrist and their own psychologist for a year who said I had PTSD, but yet they still denied me. Does that answer your questions, Congressman?

Mr. BILIRAKIS. Yes, yes.

Ms. PRICE. Thank you very much.

Mr. BILIRAKIS. Thank you very much.

And I know my time has expired. Will we have another round? I know you have three. Can I have one more question? Thank you very much.

Ms. Price, the VA stated in its testimony that from 2009 to 2013, the average number of issues included in a disability claim increased from 2.8 to 4.9 and that the VA is issuing lanes as an organizational structure to process complex claims. They stated that the core lane includes claims with three or more medical issues that do not involve special populations of veterans. That is a quote there.

Can you expand upon your thoughts about this aspect of the VA's testimony?

Ms. PRICE. Specific to core claims?

Mr. BILIRAKIS. Specific to the process.

Ms. PRICE. Okay.

Mr. BILIRAKIS. Yes.

Ms. PRICE. Putting things into lanes?

Mr. BILIRAKIS. To lanes, correct.

Ms. PRICE. Okay.

Mr. BILIRAKIS. Correct.

Ms. PRICE. Does anybody here drive in traffic? Does anyone here ever drive on the Beltway? You have lanes. There are only so many and there are express lanes. And in theory, everybody uses the express lanes. How many people have seen the news stories about the guy riding with the mannequin in a seat to get into the express lane?

Yeah, there are going to be ones that go into those express lanes, but our special operations claims, I love that they took that title, we have complicated claims. Those complicated claims are still being ignored and still being pushed aside because the lane that they have has a group, a group of adjustors and raters that are dealing with them.

Instead of them being either brokered out to other regional offices that do not have a backlog like Nebraska, Oklahoma, they are

not brokering them out, they set on them. And then they have these core which I do not even get what core is. Okay. So you have three. They have they call them the express lane for one or two. If you hit three, but it does not hit into what seems to be a rather fluid definition of special or complex, you end up in the core.

They are also not giving any information as to what the qualifications are of these people that are managing those lanes or those raters that are working in those lanes because experienced rater does not tell me anything. How many years did they have rating medical claims for MetLife before they went to the VA?

Mr. BILIRAKIS. Thank you.

I will go ahead and yield back. Thank you, Mr. Chairman.

Mr. RUNYAN. The chair recognizes Ms. Negrete-McLeod.

Ms. NEGRETE-MCLEOD. No questions.

Mr. RUNYAN. No questions.

Chairman Miller? Nothing.

I want to thank you all again for your testimony and being here today. You are now excused and we will ask the second panel to come forward to the witness table.

At this time, I welcome panel two which includes Mr. Sherman Gillums, the associate executive director for Veterans Benefits, Paralyzed Veterans of America; Mr. Ronald Abrams, joint executive director of the National Veterans Legal Services Program; and Mr. Zach Hearn, deputy director of Claims with The American Legion.

We appreciate all your attendance today. Your complete and written statement will be entered into the hearing record.

Mr. Gillums, you are now recognized for five minutes for your testimony.

ORAL STATEMENT OF SHERMAN GILLUMS

Mr. GILLUMS. Thank you, Mr. Chairman.

Chairman Runyan, Ranking Member Titus, Members of the subcommittee, on behalf of Paralyzed Veterans of America, I want to thank you for this opportunity to discuss complex claims, a topic that is near and dear to veterans like me and those we represent at PVA.

Complex claims by their nature involve those cases that require the most experienced eyes and minds to properly adjudicate. These can be the oldest claims in the inventory, claims with multiple issues or those presenting the most complicated circumstances to unravel such as military sexual trauma, PTS, and catastrophic disability.

Since membership in PVA is predicated on catastrophic disability, that will be my focus.

PVA service officers have honed a unique expertise in developing and advancing the most complex claims in the system. Where special multi compensation or SMC claims are often the exception for most accredited representatives, they are fairly common for PVA. So we appreciate this long overdue focus on complex claims.

The Veterans Benefits Administration has made tremendous strides in reducing the backlog since launching the 21st century transformation initiatives. But as we said during our June 2012 testimony complex claims remain problematic because disability benefits questionnaires, evaluation builders, and rules-based cal-

culators too often oversimplify cases that require critical thinking and inductive reasoning, not algorithms, to adjudicate with true accuracy.

So any accuracy numbers achieved through the use of these processes are qualified by context as it relates to complex claims. The problem is defining accuracy of these cases often lies in the eye of the beholder. If by accuracy VA means the veteran receives maximum entitlement, then accuracy targets remain unmet.

VA contextualizes accuracy to mean if the rator inputs a given data set such as the boxes checked on a DBQ or C&P exam results and follows the rules-based prompts, the decision will be free of error based on this algorithmic construction.

The problem is disability evaluation builders do not encourage the application of judgment-based principles like reasonable doubt or guide rating specialists through ambiguities in the evidence by reconciling the difference between total loss of bladder control versus neurogenic bladder sphincter and someone with a spinal cord dysfunction.

And this is where we have issues with the way complex claims are adjudicated under a rules-based system.

A veteran with a severe disability may receive an accurate SMC rating under VA's definition based on limited evidence and binary rules but not the most accurate rating possible that reflects the true extent of disability or need.

And I will give you a case in point that deals with the terrible condition that PVA sees all too often, ALS or Lou Gehrig's disease, a fatal motor neuron disease that does not slow down for the painstaking protocols that VA must follow.

Since the passage of the presumptive rule on ALS open entitlement to veterans and survivors, PVA has worked over 6,200 ALS claims which has made our field staff more familiar with these complex cases and extremely staunch in our insistence that they are timely and accurately adjudicated.

So you can imagine my reaction when I heard about a veteran in San Diego who received notice that he needed to submit to a compensation and pension exam to prove his need for skilled care despite presenting competent medical evidence of such need from his treating physician.

The VA has the prerogative to call claimants in for exams pursuant to a claim, but this prerogative has become one of those intractable rules that we criticize. The problem is this veteran was in hospice so he could not submit to an exam.

The VA rater, an experienced lane coach, was bound by the quality-driven rule that C&P exams are mandatory even though he had enough evidence to grant this R2 claim and the regulatory discretion to do so under Title 38 which states any hospital or exam report from a government or private entity may be accepted for rating a claim without further examination.

VHA directive unacceptable clinical evidence also allows VA examiners to supplement the review of claims files with a telephone interview if necessary with the claimant in order to complete a DBQ.

When neither option was exercised here, the words hospice and skilled care noted in the medical records simply triggered the re-

quirement to order a C&P exam in the name of quantity. Instead of serving as prima facie evidence of imminent death, thus substantiating the need for regular skilled care, common sense will give way to a calculator which is supposed to be a decision support tool, not replacement for one's reasonable faculties.

To make this point, I offered an analogy. Three plus two always equals five. And if every disability claim were based on metrics like decibel level or percentage of range of motion, a high degree of accuracy will be achievable under the current system.

But these complex claims are like adding two irrational numbers, pi 3.14, so on and so forth, plus the square root of two, to arrive at an outcome that cannot be precisely summed with a calculator. In that same vein, these claims call for informed, qualitative analysis to find the most accurate albeit imprecise answer.

That answer was never found in the San Diego case as the claim ultimately died when the veteran finally succumbed to his ALS. This was a missed opportunity to do the right thing. Unfortunately, this was not an isolated case. We see VA regional office staff across the country pointing to the same rules to justify taking unnecessary steps in similar cases.

And I can point to one in Nashville for Ms. MacDonald who is going to follow this panel. She is the regional office director who will testify.

And, of course, in New Jersey, Mr. Chairman, I also have a case for you if you are interested.

We understand the dilemma VA faces under pressure to reduce the backlog while achieving timeliness and accuracy targets, but every aspect of this problem is not a numbers game.

In the case of complex claims as we define them, there are no shortcuts to doing them right. They require experienced minds that are free to apply common sense and pro veteran legal principles like reasonable doubt or foregoing C&P exams when existing evidence is satisfactory in the qualitative deliberation of claims with no black and white answers.

As I said earlier, accuracy is not about how well VA raters adhere to a set of protocols to arrive at an ostensibly logical outcome notwithstanding obvious blind spots in the process.

Accuracy is measured by whether VA has provided the maximum benefit possible in these complex claims with imprecise answers that do not lend themselves well to binary propositions and calculators.

Thank you, Mr. Chairman, Ranking Member Titus, and Members of the committee, and I will be happy to answer any questions you have.

PREPARED STATEMENT OF SHERMAN GILLUMS

Chairman Runyan, Ranking Member Titus, and members of the Subcommittee, Paralyzed Veterans of America (PVA) would like to thank you for the opportunity to offer our views on the adjudication of VA's most complex disability claims to ensure quality, accuracy and consistency on these complicated issues. PVA has a unique expertise in dealing with complex claims because PVA members have complex disabilities as a result of spinal cord injury or dysfunction.

The Department of Veterans Affairs (VA) has fully deployed its new processing model for disability compensation claims, called the Veterans Benefits Management System (VBMS), in order to reduce the number of backlogged claims. This paperless processing model places an emphasis on expediting claims where the supporting documentation is fully developed by the Veteran. But the success of VBMS greatly depends on the process design, like rules-based processes, and supportive technologies like Special Monthly Compensation (SMC) calculators, that undergird the system. Unfortunately, rules-based systems treat all veterans the same and can be flawed by imperfect rulemaking and application. This is the challenge for a rules-based computer system; it does not have the human interaction to fully understand the circumstances of a specific injury. The numerous issues faced by veterans with catastrophic injuries create a complex set of outcomes that cannot be easily reconciled by logic-based systems that cannot appreciate nuance in disability assessments. Calculators used in rules-based systems historically fail to compute the right ratings for persons with multiple issues. This type of decision analysis uses decision trees that attempt to enable the rater to simplify and resolve complex questions. This technique, however, can be problematic when the analysis involves highly qualitative assessments that are reduced to binary choices.

This processing model also handles claims for veterans who have unique circumstances, such as financial hardship, homelessness, or serious injuries or disabilities in special "segmented lanes." The problem is the growth in the number of claims considered "complex" since September 11, 2001. Complex claims, according to VA, are characterized by the number of issues per claimant filed, which has doubled to 8.5, when compared with claims from past wartime eras. Also of significance, of the 47,814 complex claims currently in the VA inventory, over half are backlogged. In fairness, this number has steadily decreased over time. But they still take too long to adjudicate in many cases, particularly for our members with terminal ALS.

PVA has developed the unique expertise in dealing with complex claims because PVA membership is predicated on having one of the most complex disabilities one can have: spinal cord dysfunction, whether due to injury or disease. This can occur due to trauma, ALS, MS, and other debilitating causes, and often manifests in both primary and secondary residual losses throughout the bodily systems, including the often under regarded "invisible" aspects of injury like mental impairment, need for attendant care, and helplessness. Complex claims in this regard go beyond the mere number of issues.

Accurately rating these losses for claim purposes requires expertise in neurology, physiatrist, urology, psychiatry, and other specialty areas. But during Compensation & Pension (C&P) examinations, it is common to see a general practitioner authoring medical opinions on etiology, nature and extent of dysfunction and cumulative effect of separate yet concurrent disabilities. This is not a problem when the examiner devotes enough time to understanding the disability and its nuances before rendering a conclusion. However, this is not always the case. As a result, when these opinions result in lower ratings than the veteran should have, the ensuing debate takes on a subjective hue when the regulations alone do not persuade a decision reversal.

While VBA has instituted an evaluation system that assigns greater weight to complex claims, these claims are often too esoteric for journeyman raters, full of embedded issues and ambiguities both legal and medical that lead to errors. Moreover, these issues do not lend themselves exclusively to rules-based analysis without inductive, common sense reasoning in many cases, such as reasonable doubt provisions, which seems to have slowly disappeared from training and guidance for new raters. However working these cases requires a combination of experience and open-mindedness to do so correctly.

For example, in one PVA case a veteran with ALS submitted evidence supporting a higher rating for Special Monthly Compensation at the R–2 rate from his treating physician, thus verifying his need for skilled care in his home. Despite substantiating his need with credible medical documentation, he had to subsequently submit to a C&P exam at the VA's direction where the examiner concluded he did not need skilled care on a daily basis because he had little movement. Not only did the examiner improperly contemplate movement as a basis for determining need for care, VA misapplied its own regulation on resolving doubt when two expert opinions conflict. When common sense is applied, there is little doubt on the question of whether a veteran with terminal ALS, an incurable, quickly debilitating condition with foreseeable, inevitable consequences, needs skilled care. This case out of the San Diego VA Regional Office illustrates what happens when a profoundly complicated set of disabilities, a lack of expertise, subjective interpretation of regulations, and rules that do not allow for a "common sense override" option collide in a veteran's claim. In this instance, the veteran presented enough evidence from his VA clinician, yet VA still required a VA examination per inflexible VA guidance in such cases (see M21–1MR Part IV, Subpart ii, Chapter 2, section H). While PVA commends the Veterans Benefits Administration (VBA) for implementing such initiatives as the Acceptable Clinical Evidence option, which allows a rater to decide based on the record in lieu of a C&P exam, this has not taken root system-wide and needs to be.

It would also help to eliminate redundancies such as unnecessary C&P exams that either corroborate the evidence of record or create arbitrary bases for denying a claim. PVA has long criticized VA's overuse of C&P examinations particularly when the evidence of record already substantiates the claim. These exams attempt to provide a snapshot of complex disabilities based on cursory review

of the medical history and templates, called Disability Benefits Questionnaires (DBQs), that ask a lot of questions but not always the right ones. For example, "Need for higher level of assistance" is not asked on the ALS DBQ, even though the terminal nature of disease makes constant need for specialized care likely in virtually every case. And with the addition of rules-based calculators that make C&P exams a mandatory step in many instances, these incorrect decisions are given the patina of unassailable faultlessness. PVA is on record stating that rules-based calculators and processing are not conducive to accurate analysis where complex claims, as we describe them, are concerned. They can be adequate starting points. But these claims require experienced raters who, for example, would not conclude that a veteran who can barely stand up due to lost "useful" function should be rated the same as a veteran who can walk but with difficulty. Or that a veteran with paraplegia cannot be considered in need of aid and attendance because he manages his neurogenic bowel and bladder and dresses independently thus no longer functionally disabled.

Experienced raters, not algorithms, best factor in the nuances of special monthly compensation and areas of subjective interpretation that can lead to an incorrect decision. For this reason, as we asserted in June 2012 hearing testimony, reducing the backlog through the use of technologies cannot come at the expense of accurately rating the most complicated claims in the inventory. This is why PVA trained its service officers to fully develop a claim long before VA idealized the Fully Developed Claim concept. Our service officers know what questions to pose to an examiner, how to reconcile the medical and legal ambiguities, and how to draw a path toward entitlement for the rater from the time the claim is filed. But not every rater, particularly the new ones, can or feel empowered to see past the inflexible rules and seemingly indisputable C&P examinations enough to question or deviate when necessary.

Perhaps that is how it has to be in the grand scheme of the entire backlog and we understand that rules are critical to organizational success. But the exceptions are the rule for PVA. A veteran with terminal ALS died in hospice while his claim was pending before a "Special Ops" lane coach because he needed a DBQ despite the fact that the evidence of record supported entitlement. A utilitarian system that successfully delivers benefits to one million veterans, but overlooks the most vulnerable, is inconsistent with moral obligation derived from Lincoln's promise to those who served our country. As VA celebrates the success in reducing the backlog through the use of new technologies and innovative processes, more attention now needs to shift toward developing strategies for adjudicating complex claims more timely and accurately.

PVA believes there are several things that can be done to improve support to veterans needing SMC:

* SMC cases should be assigned only to the most experienced raters and VA must ensure that new raters are properly trained on SMC and its applicable regulatory doctrines.

* VA needs to allow for the application of a "common sense" override when rules-based processes limit or preclude necessary subjective analysis such as reasonable doubt or the weight/credibility of

evidence, or fail to reconcile ambiguities in the medical evidence or legal applications

* It is critical that if denial of a complex claim is predicated on a C&P exam, particularly in cases of terminal illness or catastrophic disability, the reasons and bases must detail how the weight of all evidence was assigned, whether reasonable doubt applied or not, and whether the acceptable clinical evidence option was considered in lieu of ordering a C&P exam.

* VA must expand acceptable clinical evidence (VHA Directive 2012–025) for nationwide implementation.

* And finally, VA must ensure the rules-based process allows for and encourages the application of 38 CFR §3.102, which defines "Reasonable doubt" doctrine. Accordingly, "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. Reasonable doubt means one which exists because of an approximate balance of positive and negative evidence which does not satisfactorily prove or disprove the claim." (Authority: 38 U.S.C. 501(a))

Historically, due to the nature of our catastrophically disabled membership, PVA has been the subject matter expert for claims involving multiple injuries or conditions. PVA has enjoyed the privilege of providing VA with help in field studies and advice on processes that best meet the unique needs of veterans with catastrophic injuries. PVA National Service Officers have even participated in the training of VA claims processors. This valuable service has tremendously benefited both organizations and illustrates an important, enduring partnership. PVA's success in claims processing has been due to diligence in training our service officers and in understanding the challenges faced by those with the most complex of cases. VA must do the same. Data processing is no substitute for education, training and understanding. We fear that as VA continues to aggressively look to reduce the backlog, complex claims may move further behind. While advances have been made in processing theses claims for those most needing, we caution the Subcommittee and VA not to become too satisfied with their own success to not see those still left behind. PVA looks forward to continuing to make VA aware of the need to keep complex claims in the forefront and to ensure they are properly and quickly adjudicated, particularly as they impact our most catastrophically injured veterans.

This concludes my testimony. I will be happy to answer any questions you may have.

Mr. RUNYAN. Thank you, Mr. Gillums.

With that, I will recognize Mr. Abrams for five minutes.

ORAL STATEMENT OF RONALD ABRAMS

Mr. ABRAMS. Thank you.

I have been involved in veterans' law for over 40 years. The VA has faced huge backlogs before and the VA has had to deal with reducing the backlog, adjudicating claims faster, and in almost every instance, the error rate, especially the error rate for complex

claims, has gone up. You just simply cannot go too fast when you have complicated claims.

The first thing we have to talk about is what is a complex claim. Some claims by their very nature are complicated, special monthly compensation, traumatic brain injury. In fact, the regulation dealing with TBI is so complicated that some people call it the Da Vinci code. Try and look at it sometime and you will be impressed.

Some claims can be complex as they are developed by the VA or as evidence from the claimant comes in, ancillary issues arise, different theories of service connection come up. They can become very difficult.

And some claims, more than a few and more than I like, can become complicated because of VA error. And in those cases veterans face a nightmare. Not only do they have to get the right evidence before the VA, they have to overcome the unfair denial which is an obstacle that stands in their path.

The worst type of VA errors are the result of premature adjudications. Some VA ROs incorrectly adjudicate and prematurely deny claims based upon inadequate evidence, especially inadequate VA exams. These errors reveal for many veterans that the claims process can be adversarial. Based on my experience working for the VA for many years, working for NVLSP, going on quality checks to over 40 VA regional offices for the American Legion, who should be commended for doing that work, shows to me that the error rate at the VA has been consistently at least 30 percent in the various ROs. Sometimes it is higher. It is unrealistic to assume that the VA will ever get its real error rate to 98 percent.

Over 70 percent of the claims appealed to the Board of Veterans Appeals are reversed, or remanded. And over 70 percent of the claims taken to the Court are sent back because of VA error. In fact, NVLSP wins over 90 percent of the claims that it takes to the Court.

In its rush to judgment we have found that many ROs, VAROs, prematurely deny or ignore many claims and potential claims. Unfair premature denials cause unnecessary appeals and years of delay before deserving veterans obtain justly earned benefits. And even more important some veterans fall through the cracks. Adjudicating many claims quickly does not do much good if many of these adjudications are done in a premature manner and many deserving veterans are unfairly denied. What will happen is veterans will appeal, the backlog will eventually grow, and we will be facing this over again.

I wish to commend the Under Secretary General Hickey for her commitment to the fully developed claim program. I think it is the best thing that the VA has tried in over 40 years and I encourage it.

We suggest the following: the VA work measurement system, which encourages people to prematurely adjudicate claims, has to be overhauled even if Congress has to pass a law. The VA needs more people to work these claims. In spite of electronic this, and lanes, and all the other things the VA is trying to do, which is a good thing, they do not have enough people. They need more people to work the claims.

And finally the adjudication culture at the VA needs to be changed. Many VA managers that we have met on our travels unfortunately act like they are producing widgets rather than adjudicating claims filed by real people. You saw the real people here today. Their goal should not be prompt adjudication. The goal should be a timely, accurate, and fair adjudication. Which in the long run, not in the short run, is the best way to finally adjudicate claims and reduce the backlog. Thank you.

PREPARED STATEMENT OF RONALD ABRAMS

Mr. Chairman and Members of the Committee:

I am pleased to have the opportunity to submit this testimony on behalf of the National Veterans Legal Services Program (NVLSP). NVLSP is a nonprofit veterans service organization founded in 1980 that has been assisting veterans and their advocates for over thirty years. We recruit and train volunteer attorneys, service officers from such veterans service organizations as The American Legion, the Military Order of the Purple Heart and the Military Officers Association of America in veterans benefits law, and conduct quality reviews of VA regional offices on behalf of The American Legion. NVLSP also represents veterans and their families on claims for veterans benefits before VA, the U.S. Court of Appeals for Veterans Claims (CAVC), and other federal courts. Since its founding, NVLSP has represented thousands of claimants before the Department of Veterans Affairs (VA) 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 trains and mentors volunteer lawyers to represent veterans who have appealed a Board of Veterans' Appeals decision to the CAVC without a representative. NVLSP has written educational publications, such as the Veterans Benefits Manual (VBM), that thousands of veterans advocates regularly use as practice tools to assist them in their representation of VA claimants.

WHAT ARE COMPLEX DISABILITY CLAIMS

In general there are three types of complex claims:

* some claims, by their very nature, are very complicated;
* some claims can become complex as they are developed by VA or as evidence from the claimant is submitted; and
* some claims can become complex because of VA error.

Inherently Complicated Claims

Claims involving entitlement to special monthly compensation (SMC) and claims involving the evaluation of traumatic brain injury or mental conditions can be very complicated. (In fact, the regulation dealing with the evaluation of traumatic brain injury (TBI) is so complicated that some VA adjudicators call it the "Da Vinci Code." (38 C.F.R. § 4.124(a), DC 8045).) Other inherently complicated claims include, but are not limited to, the evaluation of joint conditions (see DeLuca v. Brown 8 Vet. App. 202 (1995); claims for service connection for PTSD (includes claims for PTSD based on military sexual trauma (MST)); claims for secondary service connection; claims for service connection based on presumption

(see 38 U.S.C. § 1101(3) and 38 C.F.R § 3.309(a) (2013); and claims for increase for a service connected back disability.

Claims That Can Become Complicated

Most claims for service connection have the capacity to become very complicated. Let me give you a few examples:

A. Let us talk about what appears to be a simple claim for service connection for an arthritic joint condition (back, knee, shoulder, ankle). Many veterans support their claims for an arthritic condition by saying that they suffered from pain ever since discharge. In many instances there is no objective evidence of complaint or treatment of an arthritic problem in service. Some VA adjudicators deny such claims. These denials are wrong because this action constitutes a premature denial. If the duty to assist is triggered (38 U.S.C. § 5103A), the VA is obligated to further develop the claim to determine if the joint condition manifested to a degree of ten percent within one year of discharge (see 38 C.F.R. §§ 3.307 and 3.309(a)). The VA would be obligated to invite the veteran to submit lay and medical evidence that would tend to support the conclusion that the joint condition manifested to a degree of ten percent within the presumptive period and medical evidence linking the current disability to the symptoms identified within the first year after discharge. While medical evidence would be helpful, lay evidence alone can be enough to support the finding that a joint condition manifested to a compensable degree within the first year after discharge. Generally, a medical opinion would be required to link the veteran's current joint disability to the symptoms suffered within the presumptive period. If service connection was granted, the VA would have to establish the proper effective date and evaluate the severity of the disability. These issues can also be complicated.

B. Most claims involving entitlement to high levels of special monthly compensation (SMC) are inherently very complicated. Recently NVLSP worked on a claim for benefits that dealt with entitlement to SMC.

a. The veteran was shot in the head while on a combat mission in Iraq. As a result of his injuries, surgeons removed part of his brain and skull. In total, he had undergone over thirteen surgical procedures and had been a patient at six military and civilian medical centers and continued to suffer on a daily basis from the devastating effects from his tragic injuries.

b. The VA issued an initial Proposed Rating on March 7, 2011 (the veteran at that time, was still in service waiting to be discharged) which acknowledged eighteen different service-connected disabilities. These disabilities included residuals of traumatic brain injury (100%), a gunshot wound to the face (80%), and loss of half of the visual field in each eye (50%). The initial rating also awarded special monthly compensation at the (l ‡) level based on the need for aid and attendance (l), combined with a separately rated disability greater than fifty percent (‡). The VA also established entitlement to SMC ratings under 38 U.S.C. § 1114(k), for loss of use of the right foot, and one for loss of use of a creative organ.

c. On April 5, 2011, the VA issued a second proposed Rating. This rating established entitlement to SMC M. Underlying this proposed special monthly compensation rating was the veteran's

need for aid and attendance (l), combined with additional, separately rated disabilities of the same etiology rated at 100% or more (next higher rate, to (m)). These separately rated disabilities include: gunshot wound to the left face, right eye, seizure disorder, scars, adjustment disorder, temporomandibular joint disorder, left ear hearing loss, tinnitus, loss of smell and taste, and seventh cranial nerve dysfunction.

d. A law firm, assisted by NVLSP, (the law firm represented the veteran on a pro bono basis) argued that the evidence of record supported a higher level of SMC because he has (a) the loss of use of both his right hand and right foot, (b) the need for regular aid and attendance due to other independent disabilities, and (c) the additional need for a higher level of aid and attendance without which he would require residential institutional care.

We argued that for the reasons stated below, the veteran was entitled to compensation under 38 U.S.C. § 1114(r)(2).

e. First, under 38 C.F.R. § 4.71a and Diagnostic Code 5111, the veteran is entitled a 100% schedular evaluation based on loss of use of both a hand and a foot.

f. Second, he is also entitled to special monthly compensation benefits under 38 U.S.C. § 1114(l) due to the loss of use of both his right foot and right hand (38 C.F.R. § 3.350(b)). (The VA acknowledged the loss of use of the right foot.) In addition, as a result of his traumatic brain injury he also has functional loss of use in his right hand.

g. Third, he is also entitled to special monthly compensation benefits under 38 U.S.C. § 1114(l), based on service-connected disabilities unrelated to his loss of use of his right foot and right hand, that cause him to need regular aid and attendance. The gunshot wound to his head triggered a full range of other disabilities independent of his hand and foot, including but not limited to seizures, vertigo, loss of vision, loss of hearing, cognitive difficulties, mild loss of memory, trouble swallowing, and partial paralysis in the face.

h. Fourth, because there are two separate, unrelated special monthly compensation ratings under subsection (l), the veteran is entitled to special monthly compensation benefits under § 1114(o). Further, his entitlement to compensation under subsection (o) combined with his need for regular aid and attendance require that VA grant him, at a minimum, a rating under § 1114(r)(1).

i. Fifth, considering the full range of his service-connected disabilities that resulted from him being shot in the head, he requires an even higher level of care than regular aid and attendance under subsection (r)(1). As the record indicates, the veteran would require residential institutional care without daily personal health care services in his home, supervised by a licensed professional. VA should therefore grant the veteran a special monthly compensation rating pursuant to subsection (r)(2).

j. Also, it appears that when § 1114(t) becomes effective the veteran will be entitled to special monthly compensation benefits under subsection (r)(2) even without proving any need for daily personal health care services in the home. (§ 1114(t) became effective on October 1, 2011 after the date of this submission).

k. Happily, before the injured service member was discharged, the VA awarded benefits at SMC(r)(2) rate.

l. In this case, the excellent brief was not enough. When the VA delayed in granting this claim I asked for an explanation. I was told that in order for the VA to grant SMC(r) the evidence needed to show loss of bowl and bladder control. I was able to reach the supervisor of this VA component and took her through the entire process. Eventually she agreed with our analysis.

m. This severely wounded veteran need the help of a major law firm and NVLSP to obtain, within a reasonable time, the proper level of benefits. Not every veteran has access to these resources. Therefore, it would be better for all veterans if VA raters could learn the complicated VA rules.

C. VA errors can make simple claims complicated. For example, suppose a veteran claims service connection for PTSD. The alleged stressor or traumatic event is exposure to combat. In some cases a VA regional office schedules a VA examination (asking the doctor to determine whether the veteran suffers from PTSD and to opine as to whether the current PTSD is linked to a stressful event in service. In too many cases, the VARO does not take the time to review the record in order to tell the examiner whether or not the veteran was exposed to a stressor in service. That is a decision VA adjudicators must make. Because some VA examiners will not diagnose PTSD unless they identify an in-service stressor they provide a negative report to the VA (38 C.F.R. § 3.304(f)). Therefore, the claim for PTSD would be denied. If the veteran had a Combat Infantry Badge (an award that shows combat with the enemy), the negative medical opinion would be meaningless. In many cases, after this error, the veteran would have to appeal to the BVA or the CAVC. This could take years. A simple claim would turn into a nightmare.

THE NON–ADVERSARIAL VA CLAIMS ADJUDICATION PROCESS

First, I want to stress the obvious. Complex claims for VA disability benefits have a higher error rate than simple claims.

As far back as 1991 the US Court of Appeals for Veterans Claims (CAVC) held that "Rather than defending against the claims of veterans, the Secretary has a statutory duty to assist claimants during the course of the ex parte and non-adversarial claims resolution process at the regional office and before the BVA." Manio v. Derwinski, 1 Vet. App. 140, 144 (1991). Under 38 C.F.R. § 3.103(a) (2013) "Proceedings before VA are ex parte in nature, and it is the obligation of VA to assist a claimant in developing the facts pertinent to the claim and to render a decision which grants every benefit that can be supported in law while protecting the interests of the Government."

Based on the experience of NVLSP, the most egregious VA errors are a result of premature adjudications. For example, the errors we have identified reveal that VA adjudicators failed prior to issuing an initial rating decision, even to try to satisfy the VA statutory duty to assist the claimant by obtaining the evidence needed to substantiate the claim. The VAROs incorrectly adjudicated and

prematurely denied claims based on inadequate evidence (especially inadequate VA medical examinations).

Over the past 15 years, I have traveled to many VA regional offices as part of a quality review team for The American Legion. I have personally visited over 40 VA regional offices, some more than once. My job, as part of the Legion team, was to check the quality of adjudications at the various VA regional offices. The Legion should be commended for spending the time and money to do these reviews. Prior to that time, when I worked for the VA part of my time was spent in what was then called Statistical Quality Review (essentially VA Central Office quality review). Working for the Compensation and Pension Service, we checked the quality of adjudications in all VA regional offices (ROs). In addition, I currently review and approve or reject many BVA decisions that an NVLSP attorney proposes that we appeal to the CAVC. Based on that combined experience and based on the entirety of my work for NVLSP. I can tell you the following:

* The current error rate is somewhere between 30 and 40% (in some ROs it is higher). For example, the Legion quality review team identified errors in 35% of the cases in Indianapolis; 64% of the cases in Baltimore had errors; 31% of the cases reviewed in Nashville had errors; and 64% of the cases reviewed in Oakland had errors. (In the Legion reports errors were described as problems or comments.)

* It is unrealistic to assume that the accuracy rate at the VA regional offices will ever approach 98%. Please note that over 70% of claims appealed to the BVA are reversed or remanded and over 70% of BVA decisions appealed to the CAVC are reversed or remanded. I should also note that NVLSP obtains a reversal or remand in over 90% of the cases it takes to the CAVC.

* Many claims that should be adjudicated (or at least invited) are ignored by VA adjudicators. The VA Claims Adjudication Manual (M21–1MR) makes it clear that when preparing a decision, the VA regional office adjudicator must recognize, develop, and/or decide all issues, whether: expressly claimed, implied, informal, potential, mandated, or ambiguous. (See M21–1 MR PART III, Subpart IV, Chapter. 6, Section 2.B.2 a. Recognizing Issues When Preparing a Decision.)

* The most common errors are:

– premature denials based on inadequate development;

o under evaluation of mental conditions;

o under evaluation of joint disabilities;

o failure to consider presumptive service connection; and

o failure to inform VA medical examiners what facts have been accepted as true by VA adjudicators. (If the VA examiner does not know that a fact must be accepted as true then the medical opinion may be worthless because the VA examiner may provide an opinion based on the wrongful premise that the veteran's statement is not accurate because it is not supported by other evidence of record.)

As you know, there is always tension between quantity and quality. In fact, faced with a growing backlog caused by a surge of claims from OIF and OEF veterans and with the compounded impact of many years of premature adjudications that forced claimants to appeal or file reopened or repeat claims, the issue of quan-

tity vs. quality has gained increased importance. Unfair, premature denials cause unnecessary appeals and years of delay before deserving veterans obtain justly earned benefits. Adjudicating many claims quickly does no good if many of these adjudications are premature and many deserving veterans are unfairly denied. Many veterans will appeal and the overall backlog will simply grow.

The most important and pervasive problem facing veterans seeking VA disability benefits is the eagerness of some VAROs to adjudicate claims before all necessary evidence has been obtained. This is especially true for complex claims. For example, some VAROs prematurely deny claims based on inadequate VA examinations. In some cases, even where the VA examiner clearly fails to respond to a specific question asked by the RO, the examination report is not returned as inadequate. Instead, the claim is adjudicated and denied on the basis of the inadequate report. In other instances, claims are denied before all service medical records are received. Other claims are sometimes denied before the veteran has a fair opportunity to submit independent medical evidence. These all-too-frequent cases of premature denial result from an over-emphasis on timeliness and a lack of accountability.

It is clear to NVLSP that the way the VA evaluates its adjudicators and the way the VA awards work credit encourages sloppy adjudication resulting in premature, unfair denials. Therefore, the first thing those who manage the VA need to do is to admit there is a real and very serious problem with the quality of VA adjudications. NVLSP believes that the problems within the VA claims adjudication system are so serious that recent innovations such as paper-free or electronic claims processing, and different "lanes" for specific types of claims, while helpful, will not be enough to fix the problem.

Potential Solutions

I wish to commend the Under Secretary for Benefits, General Allison A. Hickey, for her commitment to the Fully Developed Claim (FDC) program. This FDC initiative could be the best thing the VA has attempted in the last 40 years.

That said, the VA work measurement system has to be overhauled so that there is a balance between quality and quantity. Also, the VA needs to acknowledge the complexity of its claims adjudication system and continue to increase the number of adjudicators to work these claims. At the current time, based on my 39 years working in veterans law and especially my quality review experience, I can confidently say that most regional office need more workers just to keep up with the current workload. More adjudicators are desperately needed if the backlog is to be reduced and initial claims and appeals are to be accurately adjudicated within a reasonable amount of time.

The following suggestions should be considered:

1. The VA should be required to submit to an independent quality review to validate the quality of work performed in the individual VA regional offices.

2. The pay grade levels of VA raters and Decision Review Officers should be raised on the condition that these employees are held accountable for the quality of their work (rewards for accurate

prompt adjudications, and adverse personnel action for unacceptable levels of quality).

3. Congress needs to continue to provide additional funding for more adjudicators.

4. Adjudicating from electronic records is a laudable goal if complete records can be obtained and if the database permits logical searches.

5. Finally, the adjudication culture at the VAROs needs to be changed. Many VA managers unfortunately act like they are producing widgets rather than adjudicating claims filed by real people. Their goal should not be just prompt adjudication; the goal should be a timely, accurate and fair adjudication – which in the long run is the fastest way to finally adjudicate claims. I want to note that the current VA management is trying to do this but more needs to be done.

NVLSP is not demanding perfection from VA managers and adjudicators. NVLSP, however, feels that unless the adjudication culture is changed, unless the VA can hire more adjudicators and unless the VA changes the way it counts its work, there will be no significant improvement.

Executive Summary

In general there are three types of complex claims:

(1) some claims, by their very nature, are very complicated; (2) some claims can become complex as they are developed by VA or as evidence from the claimant is submitted; and (3) some claims can become complex because of VA error.

Examples

(1) Inherently complicated – claims involving special monthly compensation; (2) claims that can become complicated such as claims for direct and presumptive service connection; and (3) claims that VA errors make complex (claims that are not properly adjudicated and prematurely denied).

Non-Adversarial claims adjudication process

(1) Complex claims have a higher error rate; (2) there is an ex parte and non-adversarial claims resolution process at the regional office and before the BVA; (3) the most egregious VA errors are a result of premature adjudications; (4) the current error rate is somewhere between 30 and 40%; (5) it is unrealistic to assume that the accuracy rate at the VA regional offices will ever approach 98%; (6) many claims that should be adjudicated (or at least invited) are ignored by VA adjudicators;

The most common errors are:

(1) premature denials; (2) under evaluation of mental conditions; (3) under evaluation of joint disabilities; (4) failure to consider presumptive service connection; and (5) failure to inform VA medical examiners what facts have been accepted as true by VA adjudicators.

Solutions

(1) The VA should be required to submit to an independent quality review; (2)

Make VA raters and Decision Review Officers accountable for the quality of their work; (3) Hire more VA adjudicators; and (4) The adjudication culture at the VAROs needs to be changed.

Mr. RUNYAN. I thank the gentleman. And with that, I know we have pending votes on the floor but we may get to questions after Mr. Hearn does this. If not we will go into recess and we will come back afterwards. So Mr. Hearn, you are now recognized for your testimony.

ORAL STATEMENT OF ZACH HEARN

Mr. HEARN. Good afternoon, Mr. Chairman, Ranking Member Titus, and members of the committee. We are here to talk about the implementation of special operations lanes. VA created these to address accuracy. What we never talk about, though, is why accuracy matters.

VA estimates they will process over a million claims again this year. The difference between their goal of 98 percent accuracy and even 97 percent is over 10,000 veterans who may not get the benefits they earn. We all know the real gap in accuracy is far more than one percent, as well. We are talking every year a small city in America full of veterans who may not get the benefits they earn through their hard years of service. Each of those veterans is a story and a family too, unique in its own way like the stories we just heard from the first panel. That is why the American Legion is constantly raising the importance of accuracy. Because for all those veterans who wind up on the wrong end of those errors VA's accuracy rate may as well be zero.

Why are there still problems? It is a complicated system. It does take experience and attention to detail to get things right. Putting experienced personnel on the tougher claims is a good start. When VA has the ability to ensure this is consistently applied across the country with the right personnel to execute this plan it will probably help with improving the figure. But there are still some system problems which hamper VA's ability to get it right for veterans.

I have been fortunate to travel to many VA offices as part of the American Legion's regional office action review program. For over 15 years we have been conducting these week-long intensive visits to VA offices to review claims and assess VA accuracy, and to see inside the offices outside the Beltway and get a true picture of how the implementation works in the field. Through these visits we have seen patterns. For example, consistency from one office to another office leaves much to be desired. Policies embraced by leadership in one office may be given lower priority in other offices. And with mixed commitment you get mixed results.

VA also seems to struggle with finding the right balance of development for claims, which leads to adjudication errors. You cannot build a house on a shaky foundation. On our review visits we examine a sample of dozens of recently adjudicated claims for veterans the American Legion represents. Often the claim has either been underdeveloped or overcomplicated. Both of these early errors are a recipe for later errors later in the process.

VA has a tendency to under develop claims and leave adjudicators with too little information to make a fair judgment on service

connection or rating. For example, in April, 2013 we visited the Nashville Regional Office. According to the April 27th Monday morning workload report Nashville had a 95 percent accuracy rating for the previous three months. During the review of 22 cases we found 11 where we commented regarding case development to include seven with errors.

Our review paints a far dimmer picture of Nashville's accuracy than indicated in the workload report. In one case a veteran was seeking service connection for PTSD. Evidence within the file obtained from a VETS Center indicated the veteran served in the Persian Gulf during Desert Storm and was chronically fearful of death due to chemical warfare. Additionally, the VETS Center exam noted treatment for symptoms associated with PTSD in service and at the time of the VETS Center exam had extensive symptoms associated with PTSD. No exam was provided by VA. A rating decision denied the veteran service connection for the condition due to a lack of diagnosis. Yet if a veteran exhibits symptoms of a condition a VA compensation and pension exam should be afforded. The veteran exhibited symptoms that should have triggered an exam. An exam was never scheduled and instead VA opted to simply deny the veteran benefits without due process.

Conversely sometimes VA does not seem to know when to stop and overcomplicates a claim. In June we visited the Reno RO. The June 3rd workload reports indicate they had a 93.2 percent accuracy rating. Our review of cases resulted in comments regarding the adjudication of 59 percent of reviewed claims for VA benefits. In one instance a veteran was seeking service connection for PTSD. During a July, 2011 VA C&P exam the examiner linked the veteran's condition to military service. The regional office returned the exam results in August, 2011 to the examiner to again restate his opinion and again the examiner stated the veteran's PTSD is related to service. After the second review VA finally adjudicated the benefit in September, 2012 and sent the notice letter in January, 2013. VA conducted two exams but only one was necessary and it took over two years from the date of the first exam to adjudicate the claim, and then another four months to notify this veteran.

The American Legion believes these problems could be mitigated by adopting some strategies our National Commander Dan Dellinger advocated for during his testimony before Congress this fall. Fixing the work credit system that currently places more emphasis on actions completed than actions done right; aggregating common errors to develop a training plan; these are steps we want to see taken. Fixing the accuracy problem needs to start with the right mind set. The mind set should not be achieving 98 percent accuracy. The mind set needs to be I need to get every step right for this veteran. Until the problem gets fixed we are losing the good faith of a city of veterans every year.

Thank you and I will be happy to take questions.

PREPARED STATEMENT OF ZACH HEARN

According to a February 2013 Congressional Research Service (CRS) report, service members have either suffered or have been diagnosed with the following complex conditions from 2000–20121:

* 131, 341 diagnosed with posttraumatic stress disorder (PTSD)
* 253,330 diagnosed with traumatic brain injury (TBI)
* 1,715 underwent amputations due to service in Iraq and Afghanistan

The Department of Veterans Affairs (VA) states 20 percent of women and one percent of men indicate they suffered military sexual trauma (MST) in service2. VA defines MST as "any sexual activity where you are involved against your will." A May 2013 Associated Press article indicates in 2012, more than 85,000 veterans sought treatment due to injuries or diseases resulting from MST; 4,000 sought VA disability benefits as a result of the condition3.

The nature of conditions such as PTSD, TBI, MST and claims that require special monthly compensation (SMC), are often complex in nature and require a deeper understanding of VA disability benefits than many other types of VA disability claims. In order to achieve Secretary Eric Shinseki's laudable goal of 98 percent accuracy on all claims by 2015, VA needed to take measures to ensure these complex claims were handled by people experienced and expert enough to reduce the risk of error.

To this end VA established segmented lanes in each of its regional offices designed to provide a specialized approach to claims' adjudication depending on the nature of the claim or the manner that the veteran or dependent sought disability benefits. The tough claims would be developed and adjudicated in the "special operations" lane with senior VA raters adjudicating these complex claims.

In concept, this practice of putting the best, most experienced personnel on the task of adjudicating the most difficult claims is laudable and logical. The American Legion supports and even utilizes the idea of ensuring newer, less experienced employees handle simpler, more straightforward claims while experienced hands do the heavy lifting on the more complicated and sensitive claims.

The American Legion has conducted Regional Office Action Review (ROAR) visits to VA Regional Offices (VAROs) for over 15 years, performing quality review oversight and evaluating work procedures during an intensive weeklong process. Recognizing The American Legion's expertise in this area as the only Veterans' Service Organization with so comprehensive a review process, the White House contacted The American Legion to coordinate an evaluation of the Fully Developed Claims (FDC) program over 2012 and 2013. These visits were performed in conjunction with the White House, Joining Forces, VA Central Office officials, and later with Disabled American Veterans (DAV) as the program expanded.

The American Legion had the opportunity to visit eight VAROs beginning in December 2012 and concluding in June 2013 during the implementation phase of the FDC program. In addition to examining the FDC program, American Legion experts discussed issues surrounding FDC with VA raters and senior staff, to include the implementation of the segmented lanes by VA. As always with

ROAR visits, recently adjudicated claims under American Legion Power of Attorney (POA) were reviewed by Legion staff and Legion accredited attorneys contracted through the National Veterans Legal Services Program (NVLSP) to gauge VA's accuracy and check for adjudication and development errors.

Unfortunately, during these visits, it became clear through discussion with senior VARO staff that experienced staff is at a premium. Much of the staff has less than five years experience and may not have either the experience or knowledge base to accurately adjudicate complex claims. While the concept of the "special operations" lanes is still sound, performance in individual VAROs may be inconsistent, because the experience base necessary to implement the plan may not exist.

Developing statistics on VA's current accuracy rating regarding complex claims such as PTSD, TBI, MST, and claims that involve SMC presents a challenge. While VA's Monday Morning Workload Report includes VA's accuracy for claims' adjudication, it fails to include accuracy ratings for the types of claims adjudicated; therefore it is difficult to determine whether this approach is helping improve the adjudication of these special claims.

Furthermore, VA's accuracy statistics from the Monday Morning reports are not consistent with the review of recently adjudicated claims as conducted by the American Legion ROAR teams. When visiting VAROs over the past year, ROAR staff reviewed 260 claims adjudicated by the VAROs. Of those 260 claims, 55 percent were identified as having errors, particularly regarding the development of the claim. This statistic is in stark contrast to the approximate 90 percent accuracy rating in claims' adjudication indicated by VA's Monday Morning workload reports.

For conditions such as PTSD and TBI, it is not simply the accurate adjudication of the individual condition that veterans face but also the conditions that may have either manifested secondary to either PTSD or TBI or were aggravated by the conditions.

Cardiovascular, gastrointestinal and musculoskeletal conditions have been identified as being possibly related to PTSD4; yet The American Legion's national appeals representatives at the Board of Veterans' Appeals (BVA) routinely have claims remanded by BVA due to VA's failure to consider the relationship of condition such as hypertension and gastro esophageal reflux disease (GERD) to PTSD. This is particularly frustrating given the support for this link is in VA's PILOT database for PTSD.

When VA is not under-developing claims, they can be prone to over complicating claims that should be simple.

The American Legion's network of over 2,900 accredited service officers often come across claims needlessly delayed while VA continues to seek additional records for conditions already adequately reflected in the record, or orders extraneous exams long after medical examinations have connected a current condition to the veteran's service and displayed the level of disability to a degree sufficient to enable rating the claim. These needless exams and record searches can add months or even years to a veteran's wait times.

In order to achieve 98 percent accuracy, The American Legion believes VA must develop a full understanding of the strengths and weaknesses of its adjudicators and the common errors commitment

systemically in the claims system. The American Legion believes through the data able to be tracked in the VBMS system, decisions of the Court of Appeals for Veterans Claims (CAVC), the Appeals Management Center (AMC) and the BVA, VA is sitting on a goldmine of data about where they can work to improve accuracy, yet this goldmine remains untapped. The American Legion would like to see VA develop a system to analyze the vast trove of error information, track it, and use it to develop training to improve results. In short, to ensure the highest reward for the training investment, VA should identify areas that training is required for its raters and provide specific training based upon the nature of the claim or condition and the identified common errors with those types of claims.

When The American Legion asked VA if they were tracking these statistics internally, VA responded: "We currently do not post or provide quality data based solely on diagnostic codes." If VA is collecting data on accuracy of adjudication based upon diagnostic code, it would be helpful for determining the success of programs such as the "Special Operations" lanes if this data was released for public review.

The American Legion believes VA should provide better information regarding VA disability claims in a public venue5. Veterans and their families should have the opportunity to know the accuracy of adjudications.

As the individual conditions treated by the "special operations" lanes are considered, The American Legion is deeply concerned not only about the statistics and effects of MST, but also the manner that claims associated with MST are adjudicated. As disturbing as the statistics regarding MST are, the manner in which the claims are adjudicated is equally disturbing. A fact sheet published by VA states6:

Department of Defense forms used in reporting incidents of sexual assault or harassment, as well as investigative reports during military service are direct evidence to support these claims. However, VA knows that events involving personal assault or sexual trauma are not always officially reported. Therefore, VA has relaxed the evidentiary requirements and looks for "markers" (i.e., signs, events, or circumstances) that provide some indication that the traumatic event happened, such as

* Records from law enforcement authorities, rape crisis centers, mental health counseling centers, hospitals, or physicians.
* Pregnancy tests or tests for sexually transmitted diseases.
* Statements from family members, roommates, fellow service members, clergy members, or counselors.
* Request for transfer to another military duty assignment.
* Deterioration in work performance.
* Substance abuse.
* Episodes of depression, panic attacks, or anxiety without an identifiable cause.
* Unexplained economic or social behavioral changes.
* Relationship issues, such as divorce.
* Sexual dysfunction.

In July 2010, VA changed its regulations regarding the evidentiary requirements for veterans seeking disability for PTSD. Re-

alizing that veterans were often facing difficulties providing stressor statements that could not be corroborated by VA, VA simplified the adjudication through "eliminating this time-consuming requirement where the claimed stressor is related to 'fear of hostile military or terrorist activity,' is consistent with the places, types, and circumstances of their service, and a VA psychiatrist or psychologist, or contract psychiatrist or psychologist confirms that the claimed stressor is adequate to support a diagnosis of PTSD.7"

Considering the negative attention the Department of Defense has received regarding the manner that it investigates and takes appropriate actions regarding MST incidents and the number of incidents unreported to authorities, it is plausible a veteran who was the victim of MST would not have the necessary evidence as indicated in VA's fact sheet regarding the adjudication of these claims to support the granting of a disability benefit associated with MST. Realizing that latitude should be afforded to veterans who were MST victims, The American Legion urges VA to "apply reduced criteria to MST-related PTSD to match that of combat related PTSD.8"

It's time to treat the survivors of this horrible crime the same way we treat the survivors of war.

Developing a plan to improve accuracy is essential because it has a definite and measurable impact on the lives of veterans. It is sometimes difficult to put the importance of accuracy in perspective, and to realize the scope of the impact of accuracy on these claims, consider the following statistics. As previously noted, the February 2013 CRS report indicated 386,386 servicemembers diagnosed with PTSD, TBI, and/or amputations. If each veteran diagnosed with these conditions sought service connection, even utilizing VA's favorable 90 percent adjudication accuracy rating, 38,638 veterans would either not be receiving service connected disability compensation or would be underrated for these conditions. If the accuracy of these claims were closer to the accuracy levels documented by The American Legion in the past 12 months during ROAR visits, over 212,000 veterans – roughly the size of Reno, Nevada9 – would either not be receiving service connected disability compensation or would be underrated for these conditions. For those veterans, VA's accuracy rate might as well be zero.

Veterans suffering from PTSD, TBI, amputations, or MST are often the most vulnerable veterans. Mobility, employment, and treatment are just some of the many issues that these veterans may face. With denial of these benefits, the opportunity for VA health care may not exist. Furthermore, denial of these benefits could exclude veterans from additional benefits they are entitled to, such as federal hiring preference and elimination of the VA funding fee for VA mortgages and VA will have failed to honor Abraham Lincoln's call "to care for him who shall have borne the battle and for his widow, and his orphan".

On behalf of our National Commander Daniel M. Dellinger, and our 2.4 million members, The American Legion thanks this subcommittee for their diligent attention to the disability benefits process. The American Legion will be watching closely, and hopes to work closely with both VA and Congress to ensure the ultimate outcome is in the veterans' best interest.

For any questions regarding this testimony please contact Ian de Planque, Deputy Legislative Director of The American Legion at (202) 861–2700 or ideplanque@legion.org

1 CRS Report for Congress, U.S. Military Casualty Statistics: Operation New Dawn, Operation Iraqi Freedom, and Operation Enduring Freedom (Washington, D.C., February 2013), pp. 5–10.

2 http://www.ptsd.va.gov/public/pages/military-sexual-trauma-general.asp

3 http://www.nydailynews.com/news/politics/military-sexual-assaults-heavy-toll-veterans-article-1.1349140

4 http://www.ptsd.va.gov/professional/pages/ptsd-physical-health.asp

5 Resolution 99: Increase the Transparency of the Veterans Benefits Administration's (VBA)

Claims Processing, - AUG 2012

6 http://www.benefits.va.gov/BENEFITS/factsheets/serviceconnected/MST.pdf

7 http://www.va.gov/PTSD—QA.pdf

8 Resolution 295: Military Sexual Trauma, - AUG 2012

9 http://quickfacts.census.gov/qfd/states/32/3260600.html

Mr. RUNYAN. Thank you, Mr. Hearn. And seeing that there is probably less than five minutes left on the clock on the floor, we are going to have to go into recess, and be back in half an hour to 40 minutes. So as of now the committee stands in recess.

[Recess.]

Mr. RUNYAN. The subcommittee will come to order and we will begin a round of questioning and I will start that off. And my first question will be for Mr. Abrams. You note in your written testimony that one manner in which claims become complex is because of VA error. Cases of this sort are often appealed and then remanded, often more than once, further increasing the complexity of the claim procedurally. Number one, can you elaborate on the common types of errors you see which causes claims to become more complex due to VA error on appeal? And number two, do you think that greater focus on appealed and remanded claims would assist VA in learning from its mistakes and making less of these types of errors in the future?

Mr. ABRAMS. Yes, I can. Let me give you an example. Suppose a veteran files a claim for PTSD. The veteran alleges that he suffered a stressor when exposed to combat. The veteran's service records show a combat infantry badge, which means the veteran was in combat. However, the VA in an effort to go fast sets up an examination and fails to tell the medical examiner to accept as true the fact that the veteran was exposed to combat. The VA examiner looks at the file, does not see any evidence of a stressful incident

in service, does not know how to read a DD–214, and determines that he could not diagnose PTSD without a stressor. Therefore he writes a negative medical opinion and diagnoses the veteran with anxiety disorder or something like that. The VA then denies the claim. To resolve that claim could take five to eight years. And the VA needs to take the time at the start, this is just a simple error, I could get into complicated ones and we would be here much too late. But that is a simple error that can be fixed if the VA takes the time at the start to tell the doctor what evidence to accept as true. That is not for the doctor to determine, that is for the adjudicator, the VA adjudicator to make that, you know, finding.

Your second question was if they got more involved, I am not sure what you mean by more involved? With remands?

Mr. RUNYAN. If they paid closer attention to the process.

Mr. ABRAMS. Well they should. They need to analyze the types of remands that come back from the Board and take action to train on that. We certainly look at thousands of cases a year and we keep a list of the common errors that the VA makes that we can win at the Court for. And in my testimony we listed some of those that you can see. But I am hoping that the VA does that. I am not sure that they do.

Mr. RUNYAN. Thank you. And again for Mr. Abrams, and Mr. Gillums maybe, you both provided examples in your written testimony of issues with VA adjudicators properly calculating the amount of special monthly compensation for severely disabled veteran. Why do you think that calculating SMC is so problematic for VA adjudicators?

Mr. ABRAMS. Do you want me to answer that first?

Mr. RUNYAN. Please. Yes, please.

Mr. ABRAMS. First of all in my experience, and I think you have staff members who have traveled to, you know, ROs that have seen this too, SMC is inherently a complicated issue. Second, there are some things that the VA looks for magic words for that are not there. In the case I wrote about in my testimony the veteran's military doctor said he had lost all function in his right hand and he had lost the use of his right foot. The VA did not conceded loss of use of the right hand because the doctor did not say the magic words. When we contacted the doctor the doctor changed his written comments and said he had lost the use of the right hand. Well loss of use of a right hand and loss of use of a foot generates an L, SMCL. He already had an L because he was in need of A&A because his traumatic brain injury. This is a man who was shot in the head in Iraq, had 18 service-connected conditions, operates on a grade-school level, has tubes in his head that fluid comes out of, has terrible scars on his face, lost the sense of taste and smell, and is, you know, has suffered tragic wounds. I got involved because I wanted to help this guy. My heart went out to him. And even after we produced clear evidence that he should get SMCR2, slam dunk, the VA did not act. So I finally was able to reach the component of the VA that does that work and I asked them why action had not been taken. And they told me they were, that they were looking for loss of bowel and bladder control. And I said that is not relevant, you do not need it. He already qualifies. And the lady was able to hear me out and I took her through the regulations and

statutes, which would take me a long time to go through, I wrote it up. And the veteran ended up getting the R2. It is on our website if you want to go look at the whole thing. We had a mix of the VA, like the band in Animal House that marched into the wall, it did not have loss of use, it only had loss of function. They were not going to accept those words. Kind of silly.

But secondly the people that were doing the work did not know the law. The VA needs to do more to train people to understand SMC. The PVA, the DAV, the Legion, MOPH does a lot of work on that issue. And if you look in our textbook we have a formula that service offices in VA can use to properly evaluate. It is complicated and you have to look at it each time. Thank you.

Mr. RUNYAN. Thank you. Mr. Gillums?

Mr. GILLUMS. In order to effectively adjudicate an SMC claim you almost have to have an intuition for things that are pretty abstract. Like how do you measure need? In one case you will have a veteran with ALS. Because he or she has trace function in their legs, or can barely stand, the rater will find that the veteran has useful function of legs. And we argue it has to be useful in terms of daily living. And so a lot of it is over time it will be cultural. This culture, this new crop of raters are being trained to follow rules.

I will give you an example. If a veteran presents with a letter from his clinician saying that he needs skilled care, that letter will trigger not some deliberation on the rater's part. It triggers the need for a C&P exam. The C&P examiner will render an opinion as to whether the skilled care is needed or not. And depending on what the C&P examiner says will dictate whether the claim is accepted or denied. The problem is in the past if you were a trained rater and you understood SMC, you knew how to weigh evidence. You knew how to weigh two conflicting medical opinions and in that case it should be resolved in favor of the veteran. Well increasingly this contemplative aspect of rating SMC is being pushed out of the culture, being pushed out of the process. And so there is no contemplation of evidence. It is either there or it is not. This person can either walk because he has got three out of five function, or they cannot with no exploration of whether it is useful or whether the three out of five results in multiple falls because the veteran tries to stand but cannot and incurs subsequent injury.

So a lot of it has to do with the fact that I believe the VA is going away from this inductive reasoning way of training its new people that probably made claims adjudication a bit longer, but it was more accurate if you got it right the first time. And so that is my insight.

Mr. RUNYAN. Thank you. And I recognize Ms. Titus for her questions.

Ms. TITUS. Thank you very much. I will ask Mr. Gillums and Mr. Hearn two questions. First, we have heard a lot about putting these complex cases in these lanes: easy, medium, and hard. I understand the value of that. But I wonder if that is really effective. Is that not oversimplifying? Would we be better off to nuance it a little more than that? Are we really creating a system that is going to produce more errors down the road and contribute to the appeals backlog? That is my first set of questions.

Second, I would go back to something I mentioned earlier: rate as you pay. We have talked about complex cases. Would it not help veterans that as you rate some of the easier aspects of these cases that have a number of different problems, that veterans get paid for those as you rate them instead of waiting until the end?

Mr. GILLUMS. I think the lanes process has worked. The field staff that work for me like it. They like being able to go to somebody who is ostensibly a specialist in that type of claim, whether it is a Post Traumatic Stress Disorder, military sexual trauma, one of our severe disability cases. So it has worked. It really depends on the people, though. It really depends on how it is managed. And that can vary from regional office to regional office. Every regional office is not doing the wrong thing. A lot of them are doing the right thing. It is the ones that we hear about, though, where it does not matter what process they have in place. If the people are inadequately trained the greatest process in the world will not help them.

To your question about the pay as you go, I think that for veterans who just need relief, they need some resources, it might be okay. My fear though is that when you pay a veteran, let us say a veteran gets that 100 percent rating, the mentality will be you have got your 100 percent rating, what more do you want? We have got you that, why are you coming back to us? Or that is going to be counted as a completed claim. I mean, how do you monitor completion of that claim? If, you know, the veteran is 100 percent and getting a check, there is still a lot of work that needs to be done in our cases. But you know, but we would have to make sure that there is no creeping standard where if they are getting paid that kind of sits on the back burner.

Mr. HEARN. This past year when we were going out and doing those trips for the FDC and we visited, to include the one where we visited in Reno, we did discover that it did bring some order to the regional office by having those segmented lanes. One of the things, though, that when we went out there I would ask employees different questions. And one of the ones was how much experience do you have? And it was overwhelming, and I would talk to coaches and some more middle management and senior staff, and then talk about the relative greenness, I guess, of the staff at that regional office.

Now I have heard senior leadership from VA say on repeated occasions that, well, the effects of the Nehmer case and the increase in claims due to Nehmer has affected the backlog. And then we have heard conversation about 9/11 and the increase in cases from there. But the one thing that no one seems to discuss is that you cannot beat back the hands of father time. And that we have now hit an era in this country where baby boomers are retiring in larger numbers. Now we did not go back and, they did not balloon the VA, I guess, at the time when they should have. And so now you have got this knowledge vacuum, I guess, in the regional office. So there just is not that much, there are not enough people, A, but B, there is not enough experience there. So it is, yes, it does help. But I think a lot of it, too, is that they just simply do not have that much experience within that regional office.

And then to go to the rate as you pay, I do think that it would be beneficial. If you think about the effects that you could if let us say somebody is trying to get service connected for three or four conditions, and you get them to the 50 or 60 percent, now they have got access to free healthcare through VA. In this age of ACA that is a very good avenue for them.

I also think that in the cases of preference for federal employment when it comes to issues dealing with VA mortgages and not having to pay the funding fee, of course these are important. And also you are getting money into the veteran's pocket. And so I do see the benefits. I agree, there probably are some concerns that we should look at as to how VA would monitor this and make sure that cases and claims are not just being set by the wayside while other things are occurring. But it is something worth considering, I think.

Ms. TITUS. Thank you.

Mr. ABRAMS. I would like to add something.

Ms. TITUS. Thank you. Is that all right, Mr. Chairman?

Mr. ABRAMS. It is the policy of the VA that when it has enough evidence to pay partially, it pays. The problem is that the workers do not get any work credit and therefore they are not encouraged to do it.

Ms. TITUS. Right.

Mr. ABRAMS. And we find many, many cases. So it is not a matter of VA policy which says when you have enough evidence and the veteran should be service connected, pay them at this level, and then when we get more we will, you know, up it. They do not want to take the time to do it because they are measured by how many cases they do, which gets back to my point of the work measurement system. And Sherman's point that if you give somebody something maybe he will go away is the thought and we will not have to, or she, and there will not be any more to do.

Ms. TITUS. Mm-hmm.

Mr. ABRAMS. So they really want to get rid of the case at that point. Thank you.

Ms. TITUS. Thank you.

Mr. RUNYAN. I thank the gentle lady. Mr. Michaud?

Mr. MICHAUD. Thank you very much, Mr. Chairman, and Madam Ranking Member for having this very important hearing. Information that the VA has provided us recently suggests that simply breaking out the work load into what they call those segmented lanes resulted in a ten percent processing increase during the first 60 days. Also easy claims saw an increase in timeliness of 100 days faster than the special operation claims. However, we know that VA continues to do a poor job in handling some of our most challenging claims. As the VA OIG noted in their testimony, in their first round of inspections 31 percent of the TBI claims reviewed showed that staff had made errors. After informing staff of errors and VA taking action, the VA OIG returned to note that 29 percent of TBI claims reviewed were found to be in error. And you look at 12 of the 20 offices reviewed were non-compliant with VBA's own policies for two consecutive inspections. They also noted that even after extreme simplification of PTSD claims, five percent of these claims are still incorrect.

In my mind, you know, the facts speak for themselves, that we need to take the segmented lanes a step further by creating a few, you know, specific offices that specialize and focus on complex claims like TBI and PTSD and MST. These offices need specialists that are aligned in cross-functional teams but focused and trained in extremely complex cases. I believe that most of you at the table support H.R. 2088 that would create Centers for Adjudication Excellence. And my question, I will start with Mr. Gillums, in your testimony you articulate the problem with underqualified individuals handling complex claims. In your opinion would we be better off if we specialized in these complex medical conditions? And the other two panelists can answer that as well.

Mr. GILLUMS. I do not remember how I characterized it but I think it is less about qualifications in some of the cases I have seen and more about the rules that constrain their ability to make judgments using the experience that they might have accumulated over the years. The rules are just different. So even in cases where you have got somebody who is qualified, the rules are different. The rules say you have to do these steps, you can no longer exercise common sense. If it says hospice, and common sense says that that is probably skilled care, you still have to ask for an exam otherwise the rating stands. That is a wrong rating. It is an inaccurate rating. And so that is where you get an error in that case. You do not exercise reasonable doubt. That is an error. You have to exercise reasonable doubt when the evidence is in equipoise. And they do not do that. So that is an error of law. So it really depends on a convergence of both an inexperienced corps of new raters as well as raters who have the knowledge and experience who do not have the freedom to exercise that judgment when it is necessary.

And if you were, you know, sort of to compartmentalize that knowledge it really just depends on how you run it. If it is, if they are allowed to exercise that qualitative, deliberative thought process as they look at these claims in these compartmentalized Centers of Excellence, then it would work. But I do not think that is necessary. I think you could do the same thing with your special ops lanes but just give them the ability to think and make decisions, exercising good judgment, versus having rules dictated as a quality review standard.

Mr. MICHAUD. Mr. Abrams?

Mr. ABRAMS. Thank you. First of all, I think the essence of fairness is time. If we set up lanes and they are pressured to go real fast, it will not matter if they are the most knowledgeable people on the planet. They will make errors. Secondly, you are taking the veteran's claim away from his local representative. The American Legion or other service organization representative in Boise, Idaho is not going to have access to the file or deal with the raters if the case goes to Denver. I am making that up, but that is a problem.

In any case until you fix how they count their work, these are fixes that sound good on paper but are not going to make a major impact. That is the first thing to do. It sounds great but I also worry that if people are trained to deal in SMC, and that is all they do, then the rest of the VA raters are not going to know SMC. And unless they are trained they will only have a small component of people to do it. There is a lot of pros and cons to do it.

It is worth a try if we can also implement some way to give them the time to do it or to hire a lot more people to help. I keep saying that, a lot more people. Thank you.

Mr. HEARN. Thank you. Generally speaking, like Ron has said, the American Legion favors the idea of local adjudication for claims. I think what you are saying, though, is that you are essentially going to create a workforce of warrant officers where they are specialized in particular areas. And this is the thing that I kind of question. If you are a high performing regional office, and you are assigned special monthly compensation, and then you are working in a different office and you are assigned something that is a little bit easier, say like tinnitus or something, what is that going to do to the morale for the people working in tinnitus? I mean, I would not feel too good for myself if they say well, this is all they think of me, I am stuck with the tinnitus game.

And so I do not think that that is necessarily the way that you want to go about it. I think that you have to have a comprehensive approach to training and evaluation. I was speaking earlier in our office about it. I said if you, ten or 12 years ago when you passed No Child Left Behind the big concern in the education community was, well, teachers are going to start teaching to the test. And that is what some of these evaluations do. When they are looking at their star team reports it is a checklist. And Congresswoman Titus could attest to her years in academia, you do not want to test somebody's knowledge on multiple choice exams. You want to test them on blue book exams. Because that is comprehensive understanding. And that is what our big concern is at The American Legion. Thank you.

Mr. RUNYAN. Thank the gentleman. And I thank all of you today for your testimony and for the work you do on behalf of disabled veterans. You are now excused from the witness table and we will ask our third panel to come forward.

This will be our final panel today. We welcome Mr. Tom Murphy, Director of Compensation Service with the Veterans Benefits Administration; also Ms. Edna MacDonald, who is Director of the Nashville Regional Office, accompanying Mr. Murphy today. We also welcome Sondra McCauley, Deputy Assistant Inspector General for Audits and Evaluations with the Office of the Inspector General, Department of Veterans Affairs. Ms. McCauley is accompanied by Mr. Brent Arronte, Director of San Diego Benefits Inspections Division. We appreciate your attendance today. Your complete and written statements will be entered into the hearing record. And Mr. Murphy, you are now recognized for five minutes.

ORAL STATEMENT OF TOM MURPHY

Mr. MURPHY. Chairman Runyan, Ranking Member Titus, and members of the subcommittee, thank you for providing me the opportunity to discuss the VA's policies and procedures for adjudicating complex disability claims. I am accompanied today by Ms. Edna MacDonald, Director of the Nashville Regional Office.

The VBA continues to experience an increase in the number and complexity of medical issues. Between 2011 and 2013 the average number of issues in original claims increased by 31 percent, from

5.5 to 7.2. In response VBA developed and implemented a new operating model.

VBA has noticed an increase in complexity of the claims from the newer generations of veterans who participated in Operations Enduring Freedom, Iraqi Freedom, and New Dawn. These young heroes have a greater chance of surviving serious injuries and often return home with multiple serious conditions. In addition, VBA continues to receive complex claims from veterans of the Vietnam era. Many of these become complicated because they are subject to federal court orders in Nehmer v. U.S. Department of Veterans Affairs.

The new organizational model incorporates cross-functional teams working on one of three segmented lanes, express, core, and special operations. Lanes were created based on complexity and priority of claims.

The express lane develops and rates claims with a limited number of issues and subject matter which could be developed and rated more quickly. Core lane includes claims with three or more medical issues that do not involve special populations of veterans. The special operations lane applies intense focus and case management on specific categories of claims that require special processing or training. It is comprised of a regional office's most highly skilled personnel with specialized experienced and training.

VBA is simplifying ratings by building new decision support tools to make our employees more efficient and their decisions more consistent and accurate. One of them is the evaluation builder and it is essentially an interactive rating schedule. The rater uses a series of check boxes that are associated with the veteran's symptoms. DBQs are another tool designed to simplify rating decisions. They replace traditional VA exam reports and capture all needed medical information up front and present the findings in a rater friendly format.

Claims are considered complex for a variety of reasons. There are three examples. Due to the complexities of rating TBI the special operations lane processes these claims. Since March, 2013 all raters in this lane are required to complete specialized training. This web-based module is 22.5 hours on how to rate a claim for the residuals of TBI. Due to the myriad of symptoms that a veteran with TBI may experience, it is often unclear which symptoms are solely attributable to TBI. In October, 2011 Compensation Service provided guidance that examination findings should be related to the veteran's TBI condition unless such symptoms are clearly attributable to other causes. In addition VBA has instituted safeguards to ensure consistency and accuracy. All raters are required to obtain a second signature on TBI claims until the individual demonstrates 90 percent accuracy in rating such claims.

As a result of these efforts VBA has seen TBI grant rates increase from 21 percent in 2007 to 47 percent in 2013. Further, the accuracy of TBI ratings during fiscal year 2013 was 92.37 percent, slightly higher than the national average for all rating claims during the same period.

Service connection for PTSD requires three things: medical evidence diagnosing the condition, an in service stressor, and a nexus connecting the two. In 2010 Secretary Shinseki made it easier for

veterans with fear based PTSD to establish service connection. VA added a regulation providing that a veteran's lay statement alone can now establish the required in service stressor. VA provided extensive training on this regulation change to ensure consistent and accurate ratings.

MST-based PTSD claims are processed by the special operations lane as well. Complications generally arise in situations where there is no corroborating evidence of the stressor in the veteran's military records. In these cases VA must notify the veteran that the evidence from outside military records may be used to support and claim and must attempt to obtain any such evidence identified. In 2011 VBA conducted a quality review of 400 MST-based PTSD claims, which found that an approximate 25 percent error rate based primarily in incomplete development. We developed and implemented an MST-based PTSD training package that emphasized the proper evidence development and recognition of the types of evidence. Following the training the MST-based PTSD grant rate rose to a level comparable to that of other types of PTSD.

VA has seen a significant increase in the complexity of claims received in recent years. To address this trend VA implemented a new organizational model with a special operations lane focusing on complex disability claims.

This concludes my statement, Mr. Chairman. I would be happy to entertain any questions you or members of the subcommittee may have.

PREPARED STATEMENT OF TOM MURPHY

Chairman Runyan, Ranking Member Titus, and Subcommittee Members, thank you for providing me the opportunity to discuss Department of Veterans Affairs (VA) policies and procedures for adjudicating complex disability claims.

I am accompanied by Ms. Edna MacDonald, Director of the Nashville Regional Office.

The Veterans Benefits Administration (VBA) continues to experience an increase in the number and complexity of medical issues in disability claims received. Between 2011 and 2013, the average number of issues in original claims for service connected disability compensation increased by 31 percent, from 5.5 issues in 2011 to 7.2 issues in 2013. In response to this trend and to achieve the Secretary's goal of processing all claims within 125 days at 98 percent accuracy in 2015, VBA developed and implemented a new operating model that includes a formal mechanism to manage complex claims. My testimony will explain why certain claims are more complex than others and how VBA has improved our policies and procedures to provide more timely and accurate decisions to Veterans with complex claims.

Backlog Update

Before discussing the topic of today's hearing, I would like to provide the Subcommittee with an update on our progress to date in eliminating the claims backlog. VA has significantlyreduced the backlog by approximately

34 percent, or approximately 210,000 claims since March 2013, and we expect the reductions to continue in upcoming months. Further, we continue to execute our claims Transformation Plan.

More importantly, while increasing our productivity we have concurrently increased the quality of our work. In June 2011, our average for claims accuracy was approximately 83 percent; in August of 2013 that number was approximately 91 percent. When measuring accuracy at the medical issue level – which is a truer measure of VA's workload – our rating accuracy today stands at 96.1 percent.

The current inventory of claims, backlog, and other workload measures for both the national level and at the regional office level are available by visiting http://www.vba.va.gov/reports/. The Monday Morning Reports provide workload indicators reported by VBA regional offices and are updated weekly. Similarly, the ASPIRE Dashboard provides monthly information on how VBA and regional offices are doing in relation to 2015 aspirational goals.

None of this progress would be possible without the tremendous support VA receives from its partners including this Subcommittee, the rest of Congress, our Veterans Service Organizations, and County and State Departments of Veterans Affairs. Our progress is also the result of unprecedented effort and dedication of VBA employees, 52 percent of whom are Veterans themselves, and the support provided by our partners in VA's Office of Information and Technology and Veterans Health Administration. Veterans themselves have contributed to our progress by participating in the Fully Developed Claims program and submitting claims electronically through the eBenefits Web site. We appreciate the support of all of our partners and stakeholders as we continue working to eliminate the claims backlog.

Complexity of Claims

From 2009 to 2013, the average number of issues included in a disability claim increased from 2.8 to 4.9. In particular, VBA has noticed an increase in complexity of the claims from the newer generation of Veterans who participated in Operation Enduring Freedom, Operation Iraqi Freedom, and Operation New Dawn. These young heroes have a greater chance of surviving serious injuries and often return home with multiple amputations, blindness, burns,

multi-organ system damage, and most notably, with the signature wounds of the war—traumatic brain injury (TBI) and posttraumatic stress disorder (PTSD).

In addition, VBA continues to receive complex claims from Veterans of the Vietnam Era, who submit more claims than Veterans from any other period of service. Many claims from Vietnam Era Veterans are also complicated because they are subject to Federal court orders in Nehmer v. U.S. Dep't of Veterans Affairs under which, when VA adds a new presumptive condition to the list of those conditions associated with exposure to herbicides used in Vietnam or modifies the definition of a presumptive condition, it must re adjudicate the claims of Veterans or eligible Survivors who previously filed claims seeking benefits based on that condition, and in appropriate cases, pay benefits retroactively to the date of

receipt of the denied claim. These court orders have added to the complexity of rating many claims from Vietnam Era Veterans.

VBA Organizational Model

In response to the increasing complexity of claims and to achieve the Secretary's goal of processing all claims within 125 days at 98 percent accuracy in 2015, VBA developed and implemented a new operating model by March 2013 that includes a formal mechanism to manage complex claims. Initially planned for deployment throughout fiscal year (FY) 2013, VBA accelerated implementation of its new organizational model by 9 months due to early indications of its positive impact on performance.

The new organizational model incorporates a case-management approach to claims processing by reorganizing the workforce into cross-functional teams so that employees see the entire processing cycle of a Veteran's claim. These cross-functional teams work together on one of three segmented lanes: express, special operations, or core. Lanes were created based on the complexity and priority of the claims, and employees are assigned to the lanes based on their experience and skill levels. An Intake Processing Center serves as a formalized triage process to quickly and accurately route Veterans' claims to the right lane when first received.

The express lane was developed to identify those claims with a limited number of medical conditions (i.e., about 1–2 issues) and subject matter which could be developed and rated more quickly. The special operations lane applies intense focus and case management on specific categories of claims that require special processing or training (e.g., homeless or terminally ill Veterans, military sexual trauma (MST), former Prisoners of War, seriously injured, etc.). These claims continue to receive priority processing. The core lane includes claims with three or more medical issues that do not involve special populations of Veterans.

The special operations lane is comprised of a regional office's most highly skilled personnel with specialized experience and training. The quality of our decisions improves by assigning more experienced and skilled employees to the more complex claims in our special operations lane. When VA receives a complex claim, a comprehensive screener ensures that the claim is correctly identified and routed to the appropriate member of the special operations lane. Because of the expertise of the screener, the claim is carefully examined to determine the next action required. For example, cases that are fully developed and ready for a decision will be routed directly to an experienced rater who will fully evaluate the claim. If the case requires additional evidence to support the claim, the screener will forward the case to an employee who will take the appropriate development action. The team includes a supervisor and claims assistants who perform important clerical work. The keys to success within the special operations lane are communication, attention to detail, and accountability.

Calculators and Evaluation Builder

VBA is also simplifying ratings by building new decision-support tools within the Veterans Benefits Management System (VBMS) to make our employees more efficient and their decisions more consistent and accurate. We have already developed rules-based cal-

culators for disability claims decision-makers to provide suggested evaluations. For example, the hearing loss calculator automates decisions using objective audiology data and rules-based functionality to provide the decision-maker with a suggested decision.

The Evaluation Builder is essentially an interactive disability rating schedule. The VBA decision-maker uses a series of check boxes that are associated with the Veteran's symptoms. Using the Evaluation Builder, the VBA employee determines the proper diagnostic code out of over 800 codes as well as the level of disability based on the Veteran's symptoms. The Veteran receives an accurate rating decision every time the Evaluation Builder is used. This saves employees time that would have been spent looking up the rating schedule in a paper format. To date, 10 of the 15 body systems in VA's Schedule of Rating Disabilities have been embedded into the Veterans Benefits Management System (VBMS).

Disability Benefits Questionnaires (DBQ)

DBQs are another transformation initiative designed to simplify rating decisions. DBQs replace traditional VA examination reports and are designed to capture all the needed medical information relevant to a specific condition at once and up front so that claims can be developed and processed in a more timely and accurate manner, with the end result being faster service for Veterans. DBQs change the way medical evidence is collected, often giving Veterans the option of having their private physicians complete a DBQ that provides the medical information needed to rate their claims – minimizing the need for a VA exam which adds additional time to the claim development process.

Information in the DBQs maps to the VA Schedule for Rating Disabilities, and provides all of the necessary information to decide a disability claim. Fully and properly completed DBQs, whether from private providers or within the internal VA examination processes, have the potential to reduce rework, the largest category being exams with insufficient information. VBA's future goal is to turn DBQ objective responses into data to drive a calculator-based business-rules engine in VBMS, to achieve automated decision support to improve consistency and accuracy of decisions, and reduce processing time per case.

Examples of Complex Claims

Claims are considered complex for a variety of reasons. Three examples are outlined below along with our efforts to provide more timely and accurate decisions for such claims.

TBI

Due to the complexities associated with rating TBI, the special operations lane processes claims from Veterans seeking compensation for TBI. Since March 2013, all raters in the special operations lane are required to complete specialized training on TBI. This Web-based TBI training module is a 22.5 hour course on how to rate a claim for the residuals of TBI.

Veterans who file claims for TBI receive a compensation and pension examination, which is designed to elicit all clinical findings attributable to TBI. However, due to the myriad of symptoms that a Veteran with TBI may experience, it is often unclear which symp-

toms are solely attributable to TBI. In October 2011, Compensation Service provided guidance that examination findings should be related to the Veteran's TBI condition, unless such symptoms are clearly attributable to other causes.

In addition, VBA has instituted safeguards to ensure consistent and accurate ratings for TBI claims. All raters are required to obtain a second signature on TBI claims until the individual demonstrates 90-percent accuracy in rating TBI claims.

As a result of these efforts, VBA has seen TBI grant rates increase from 21 percent in 2007 to 47 percent in 2013. Further, the accuracy of TBI ratings during quality reviews during FY 2013 was 92.37 percent, which was slightly higher than the national average for all rating claims during the same period.

PTSD

Service connection for PTSD requires: 1) medical evidence diagnosing the condition; 2) a link, established by medical evidence, between current symptoms and an in-service stressor; and 3) credible supporting evidence that the claimed in-service stressor occurred. VA recognizes that certain in-service stressful events may be difficult to document.

In 2010, Secretary Shinseki took action to make it easier for Veterans with PTSD based on fear of hostile military or terrorist activity to establish service connection. Under the generally applicable criteria for PTSD, VA requires corroborating evidence of occurrence of an in-service stressful event from such sources as military personnel records, service treatment records, lay statements from fellow Servicemembers, or military unit records provided by the Department of Defense to service-connect a Veteran's current PTSD symptoms. VA added a regulation providing that a Veterans' lay statements alone can now establish the required in-service stressor if it is related to fear of hostile military or terrorist activity and a VA psychiatrist or psychologist or psychiatrist or psychologist with whom VA has contracted, confirms that the claimed stressor is adequate to support a PTSD diagnosis, and that the Veteran's symptoms are related to the claimed stressor. VBA's Compensation Service provided extensive training on this regulatory amendment to ensure consistent and accurate ratings were made after this change. As a result of this liberalized stressor-verification standard, outreach, and other factors, the number of Veterans in receipt of compensation for PTSD increased from approximately 374,000 in FY 2009, to 649,000 in FY 2013.

PTSD Based on MST

PTSD claims based on MST are one of the complex claims processed by our most experienced adjudicators in the special operations lane. Complications with these claims generally arise in situations where there is no corroborating evidence of the MST stressor in the Veteran's military records. Delays can occur because VA must obtain the complete personnel file and seek evidence from sources other than the Veteran's service records to corroborate the Veteran's account of the stressor incident. Additionally, VA must notify the Veteran that evidence from outside military records may be used to support the claim and must follow up and attempt to obtain any such evidence identified by the Veteran. These develop-

ment issues add to the claims' complexity, but VA has taken steps to address them.

VA is committed to serving our Nation's Veterans by accurately adjudicating claims based on MST in a thoughtful and caring manner, while fully recognizing the unique evidentiary considerations involved in such a claim. In 2011, VBA conducted a quality review of 400 MST-based PTSD claims, which found an approximate 25-percent error rate based primarily on incomplete development. To remedy this, we developed a MST-based PTSD training package and conducted a nationwide online training broadcast was conducted. The training emphasized proper evidence development and recognition of the types of evidence (such as erratic performance evaluations; sexually transmitted disease tests; requests for transfers; mental health counseling; behavior changes; and lay statements from fellow Servicemembers, family, or clergy) that can corroborate a Veteran's account of the stressor incident.

The training also emphasized that when there is corroborating evidence, including evidence of a behavioral change, VBA must request a disability compensation examination that includes a medical opinion about whether the evidence of record indicates that a personal assault occurred. This medical opinion can provide a basis upon which service connection for PTSD can be established.

Following the training, the MST-based PTSD grant rate rose to a level comparable to the level for all types of PTSD claims. In order to assist Veterans' whose claims were denied prior to the training initiative and who may benefit from additional evidence development for markers, we decided to conduct a review of previously denied MST-based PTSD claims, upon a Veteran's request. VBA identified approximately 2,500 Veterans with previously denied MST-based PTSD claims and sent notice letters to the Veterans in April 2013. The letters invited the Veterans to request a review of the denied claims by their regional offices and to submit or identify any additional evidence to support their claims. Compensation Service updated the MST-based PTSD Training Letter to explain the review to regional office personnel. Additionally, VA's National Call Center has developed and implemented a question and answer script on how to answer questions on the review process.

There has been one additional legal development in the adjudication of MST claims. On September 30, 2013, the United States Court of Appeals for the Federal Circuit ruled in AZ v. Shinseki that, where an alleged sexual assault is not reported, the absence of service records documenting the alleged assault is not pertinent evidence that the assault did not occur. The court reasoned that because the majority of in-service sexual assaults are not reported and records of unreported sexual assaults do not exist, the absence of a service record in such a case is not reliable evidence and cannot be considered by VA. This legal development is consistent with VBA's current policies and procedures as we do not make rating decisions based on the absence of a reported sexual assault in a service record.

In FY 2013, the grant rate for MST-based PTSD was within six percentage points of the grant rates for all PTSD claims. The grant rate for male Veterans claiming MST-based PTSD is now within

seven percentage points of the grant rate for female Veterans claiming MST-based PTSD. In FY 2013, there was only a two percentage point difference in the grant rate for all PTSD claims submitted by male and female Veterans.

Training and Accuracy

VBA is committed to providing high quality, timely, and relevant training for both new and experienced personnel to ensure that claims-decision quality continues to improve. To this end, our transformation efforts include redesigned programs and tools that standardize training across our 56 regional offices.

In 2012, VBA created Quality Review Teams (QRT) to improve employee training and decision accuracy while decreasing rework time. We reassigned 573 of our most skilled and experienced employees from their duties as claims processors to serve on QRTs. In FY 2013, these QRTs conducted more than 145,000 in-process reviews, preventing errors before they could impact Veterans and provided specialized retraining to claims processors so these errors can be prevented in the future.

VA currently uses a 3-month rolling average to track the impact of initiatives on rating accuracy. These metrics are reported in ASPIRE and can be seen online by anyone inside or outside of VA. In FY 2012, VA showed a

3-percent increase in national accuracy – from approximately 83 percent to

86 percent. In FY 2013, our 3-month accuracy at the claims level rose to approximately 90 percent, meeting the goal we set for ourselves this year. The accuracy outcome goals for the next 2 years are approximately 93 percent in

FY 2014, and 98 percent in FY 2015.

It is important to recognize that under the existing quality review system, any one error on the claim, no matter how many medical conditions must be developed and evaluated, makes the entire claim in error – the claim is therefore counted as either 100 percent accurate or 100 percent in error, with no credit for anything in between. Medical issues are defined as individually evaluated medical conditions. Given that the average number of medical issues in original claims filed by recently separated Servicemembers is now above 10 issues per claim, we do not believe the current all-or-nothing measure reflects the actual level of decision accuracy achieved. When we measure the quality of claims based on the individual medical issues rated (i.e., "issue-based accuracy"), the accuracy of our decisions is at approximately 96.1 percent. This issue-based accuracy approach also affords VBA the opportunity to precisely target those medical issues where we make the most errors, at the individual employee level, and develop and direct training in a targeted manner.

Conclusion

VA has seen a significant increase in the complexity of claims received in recent years. To address this trend, VA has implemented a new organizational model with a special operations lane focusing on complex disability claims. We firmly believe this initiative, along with VBA's other transformational initiatives, will help VA elimi-

nate the claims backlog and achieve the Secretary's goal of all claims completed in 125 days at 98 percent accuracy in 2015.

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

Mr. RUNYAN. Thank you, Mr. Murphy. With that, I would recognize Ms. McCauley.

ORAL STATEMENT OF SONDRA F. MCCAULEY

Ms. MCCAULEY. Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to discuss our work regarding complex disability claims processing issues. With me today is Mr. Brent Arronte, Director of our San Diego Benefits Inspection Division.

In addition to our nationwide audits, the OIG reports on individual VARO effectiveness in providing timely and accurate benefits and services to veterans. Of major concern, however, is continued VARO non-compliance with VBA policy despite our recommendations for addressing issues we identify.

Specifically in response to our May, 2011 report, VBA began requiring second-signature reviews of all TBI claims until raters demonstrate 90 percent accuracy in TBI claims processing. However, in fiscal year 2013 we saw only slight improvement since our first cycle of inspections. Twelve VAROs remained non-compliant in processing TBI claims for two consecutive inspections. Half of the errors were due to VARO staff using inadequate medical exams to rate TBI claims.

In January 2011, we projected VBA incorrectly processed 15 percent of 100 percent disability evaluations for about 181,000 veterans, and paid a net $943 million without adequate supporting medical evidence. VBA implemented training and internal controls to address this issue. However, VBA repeatedly delayed completing its review of all 100 percent disability evaluations to ensure each had a future examination date entered in the electronic record.

Our second cycle of VARO inspections continued to show a high error rate in processing these evaluations. In most cases errors occurred when staff did not enter suspense diaries in VBA's electronic system to request medical reexaminations as required.

We continue to review VBA's systematic analyses of operations (SAOs), an organized means of reviewing Veterans Service Center (VSC) operations to identify problems and propose corrective actions. We found six VAROs remained non-compliant in this area for both cycles of our inspections.

Generally VARO management did not provide adequate oversight to ensure SAOs were timely and/or complete. We noted a correlation between SAO non-compliance and VAROs having vacant or temporary director or VSC manager positions for five months or greater.

Currently we are assessing VBA's initiatives to improve claims processing and eliminate the backlog. We are reviewing the initiative VBA began on April 19, 2013 to process within 60 days all claims over two years old. Of note we determined ten of 11 provisional rating decisions at the Los Angeles VARO were non-compli-

ant with VBA guidance. We found the VARO Director's office had emailed conflicting guidance to staff requiring provisional rating without supporting medical evidence. Concerned that additional errors may exist, we recommended that VBA review for accuracy all 470 provisional ratings completed by the Los Angeles VARO after the conflicting guidance was issued.

Findings from our ongoing audit of the Veterans Benefits Management System (VBMS) suggest some progress. While VBA has reduced its inventory and average days to complete claims, we cannot determine if the improvements are related to VBMS or other transformation initiatives. Moreover, VBMS continues to experience performance issues and users rely on legacy systems to fully process claims. We have initiated a review to determine the extent to which VBMS helps VBA improve the accuracy and consistency of its claims rating decisions. We expect to report our findings in early 2014.

In conclusion, VBA has made some progress but continues to face challenges to improving claims processing accuracy and timeliness. Inefficiencies mean not only added burdens and delays for veterans, but also improper payments that VBA will not likely recover. We will continue to look for ways to promote improvements in VBA benefits deliver during our future audits and inspections.

Mr. Chairman, this concludes my statement. We would be pleased to answer any questions that you or other Members of the Subcommittee may have.

PREPARED STATEMENT OF SONDRA F. MCCAULEY

Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to discuss issues related to the performance of Department of Veterans Affairs (VA) Regional Offices (VAROs) as identified in reports by the Office of Inspector General (OIG). The reports include audits of the programs and operations of the Veterans Benefits Administration (VBA) as well as inspections conducted at individual VAROs. I am accompanied by Mr. Brent Arronte, Director, OIG San Diego Benefits Inspection Division.

Background

Delivering timely and accurate benefits and services to the millions of veterans who provided military service to our Nation is central to VA's mission. VBA is responsible for oversight of the nationwide network of regional offices that administer a range of veterans benefits programs, including compensation, pension, education, home loan guaranty, vocational rehabilitation and employment, and life insurance. These programs are estimated to pay out over $73 billion in claims to veterans and their beneficiaries in fiscal year (FY) 2014, and comprise approximately half of VA's total budget.

As part of our oversight responsibility, we conduct inspections of VAROs on a 3-year cycle to examine the accuracy of claims processing and the management of Veterans Service Center (VSC) operational activities. After completion of our inspections, we issue a separate report to each VARO Director on the inspection results. Our inspections address the processing of high-risk claims such as traumatic brain injury (TBI) and temporary 100 percent disability

ratings. We previously reviewed claims related to post-traumatic stress disorder (PTSD), however due to a change in regulations as well as improved accuracy in processing PTSD claims, we discontinued our reviews of these claims in FY 2012.

In FY 2012, we completed our first cycle of reviews of all VAROs and began our second cycle of oversight. To date, we have completed 20 VAROs in our second cycle of reviews.1 We are also performing separate reviews focused on two of VBA's major initiatives related to electronic processing of claims through the Veterans Benefits Management System (VBMS) and provisional decisions on claims over 2 years old.

VA Regional Office Inspections

Since FY 2009, we have conducted 77 VARO inspections and have consistently reported the need for enhanced policy guidance, oversight, workload management, training, and supervisory review to improve the timeliness and accuracy of disability claims processing and VARO operations.2 Of those offices that have been inspected twice, the Denver and Milwaukee VARO inspections had the highest (80 percent) level of overall compliance with VBA policy in the areas that we inspected.3 The Baltimore VARO had the lowest compliance rate in areas we inspected. .

An area of concern from an oversight perspective is continued VARO non-compliance with VBA policy despite our initial identification and reports on such problems. In FY 2013, we inspected 20 offices that we previously inspected and found 17 of the offices continued to be non-compliant with VBA policy in one or more of the protocol areas previously inspected.

Disability Claims Processing

In the second round of inspections, we are focusing on processing high-risk claims, TBI claims and temporary 100 percent evaluations. We adjust our inspection protocols as needed, with some review areas continuing year-to-year while others are replaced because VAROs have demonstrated improvements in performance of those review areas or in some cases, changes in VBA policy.4

Traumatic Brain Injury Claims

In response to a recommendation in our May 2011 report, Systemic Issues Reported During Inspections at VA Regional Offices, VBA agreed to develop and implement a strategy for ensuring the accuracy of TBI claims decisions. The then-Acting Under Secretary for Benefits responded by providing guidance to VARO Directors to implement a policy requiring a second signature on each TBI case that a Rating Veterans Service Representative (RVSR) evaluates until the RVSR demonstrates 90 percent accuracy in TBI claims processing. The policy indicates second-signature reviewers come from the same pool of staff as those used to conduct local station quality reviews. Yet, we continue to identify significant processing errors related to TBI disability claims in our most recent inspections, and in many cases, the errors occur despite secondary reviews.

Our 77 inspections to date showed that staff had made errors in 31 percent of the TBI claims we reviewed. More than half of the errors we identified were due to VARO staff using inadequate med-

ical examination reports to evaluate residual disabilities associated with traumatic brain injuries. We learned through interviews that RVSRs were not consistently returning the inadequate reports to VA medical facilities as required due to pressure to meet production requirements. A common scenario in TBI claims processing involved veterans who had TBI-residual disabilities as well as co-existing mental conditions. When medical professionals did not ascribe the veterans' overlapping symptoms to one condition or another condition as required, VARO staff could not make accurate disability determinations. RVSRs' difficulty in following complex TBI claims evaluation policies is contributing to the TBI claims processing errors.

In the first inspection cycle, we reviewed 1,077 traumatic brain injury claims at 57 offices and found 338 (31 percent) of these contained processing errors. In FY 2013, during subsequent inspections at 20 offices, we examined 411 claims and found 118 (29 percent) of these cases had errors—demonstrating some improvement in the error rate percentages. Twelve of the offices inspected were non-compliant with VBA policy for two consecutive inspections.5 In most cases, the errors occurred because VARO staff used inadequate medical examination reports to evaluate residual disabilities associated with traumatic brain injuries.

Temporary 100 Percent Disability Evaluations

In our January 2011 audit report, we projected VBA had not correctly processed 100 percent evaluations for about 27,500 (15 percent) of 181,000 veterans.6 We reported that since January 1993, VBA had paid veterans a net $943 million without adequate medical evidence to support the payments. We concluded that if VBA did not take timely corrective action, it could overpay veterans a projected $1.1 billion over the next 5 years. The Under Secretary for Benefits agreed with our seven report recommendations for implementing training and internal control mechanisms to improve timeliness in processing these types of claims. To date, VBA has implemented six of the seven recommendations.

However, of major concern is VBA's delay in implementing the final recommendation, to review all temporary 100 percent disability evaluations and ensure each had a future examination date entered in the electronic record... The Acting Under Secretary stated the target completion date for VBA's national review would be September 30, 2011. However, VBA did not provide each VARO with a list of 100 percent disability evaluations for review until September 2011. VBA subsequently extended the national review deadline on four occasions. To date, VBA has not completed this national review requirement and improper monthly benefits continue to be paid despite a lack of adequate medical evidence.

Although VBA has requested we close the final recommendation on several occasions, we have not been able to substantiate that VBA's methodology for identifying all claims that may be paying inaccurate benefits is effective. Further, VBA's methodology does not call into question a veteran's 100 percent disability evaluation if there is also an associated control referred to as an "end product" to alert VBA claims processing staff of the need to review the claim at a later date. Having a control in place is not providing adequate

assurance that the reviews will occur or that reviews will be timely. VBA designated the use of end product 684s as the control to ensure staff review 100 percent disability evaluations to determine if the monthly payments are accurate. However, VBA does not have performance metrics in place for end product 684s establishing a timeframe in which staff are expected to review and take corrective actions on pending end product 684s. As of November 19, 2013, VBA had 7,562 end product 684s pending on average for 340 days showing delayed corrective actions to identify and discontinue potential improper payments.

We continue to follow up on these audit results during our VARO inspections and continue to find significant processing errors. Inspection results from 71 benefits inspections show VARO staff incorrectly processed 61 percent of the temporary 100 percent disability evaluations we reviewed, resulting in over $19 million in overpayments to veterans. The majority of these errors occurred when VARO staff did not input reminder notifications in VBA's electronic system to request reexaminations of these veterans as required by VBA policy.

For the first inspection cycle, we reviewed 1,480 temporary 100 percent disability evaluations at 51 offices and found 973 (66 percent) of these contained processing errors. In FY 2013, during subsequent inspections, we examined 594 claims and found 290 (49 percent) of these cases had errors. Twelve of the offices inspected during FY 2013 were non-compliant with VBA policy for two consecutive inspections.7 In most cases and for both inspection cycles, the errors occurred because staff did not enter reminder notifications in VBA's electronic system to request re-examinations for veterans with temporary disability evaluations as required. We did identify improvement in this area in our 2013 inspections; however, in our view the error rates continue to be significant.

Post-Traumatic Stress Disorder

When we began our VARO inspections, we included PTSD claims processing as a review area. In our summary report dated May 2011, we projected VARO staff did not correctly process 1,350 (8 percent) of approximately 16,000 PTSD claims completed from April 2009 through July 2010. About 38 percent of the errors were due to staff improperly verifying veterans' alleged stressful events, a requirement for granting service connection for PTSD. VARO staff lacked sufficient experience and training to process these claims accurately. Additionally, some VAROs were not conducting monthly quality assurance reviews. For these reasons, veterans did not always receive accurate benefits.

Effective July 13, 2010, VA amended its rule for processing PTSD disability compensation claims. The new rule allows VARO staff to rely on a veteran's testimony alone to establish a stressor related to fear of hostile military or terrorist activity, as long as the claimed stressor is consistent with the circumstances of service. This change significantly reduced processing errors associated with PTSD claims. Prior to the rule change, we identified a 13 percent error rate in PTSD claims processing; after the rule change the error rated dropped to 5 percent. As such, we no longer review these types of claims.

Operational Issues

One area that we continue to review is VBA's Systemic Analysis of Operations (SAOs). An SAO is an organized means of reviewing VSC operations to identify existing or potential problems and propose corrective actions. During the first inspection cycle, we identified 30 of the 56 offices inspected were non-compliant with VBA policy. In FY 2013, during subsequent inspections at 20 offices, 9 of the offices inspected were non-compliant—of these 6 were non-compliant for two consecutive inspections.8 Generally, SAOs were untimely and/or incomplete because VARO management did not have adequate oversight to ensure SAOs addressed all necessary elements and operations of the VSC and that they were submitted by the required due date.

Another area of concern is VBA management vacancies. We noted a correlation between VAROs producing complete and timely SAOs and VSC compliance with other VBA policies. We found that five VAROs, where managers ensured SAOs were timely and complete, were the most compliant in other operational activities we inspected. Conversely, of the six VAROs that had untimely and/or incomplete SAOs, five had the lowest performance in other operational activities, such as claims processing, mail handling, and data integrity. At five of the six least compliant VAROs, vacancies in senior management positions contributed to delays in completing SAOs and implementing corrective actions. These VAROs had Director or Veteran Service Center Manager positions vacant or filled with temporary staff for periods of 5 months or greater. For example, during the 8-month absence of the Anchorage Veterans Service Center Manager, that office did not have any senior leadership physically in place to manage and oversee operations.

Current OIG Work On VBA Initiatives

We are assessing VBA transformation initiatives to improve claims processing and eliminate the backlog. Specifically, we are conducting reviews of two key VBA initiatives: processing of claims over 2 years old and implementation and accuracy of the Veterans Benefits Management System (VBMS)—VBA's web-based, paperless claims processing solution to support improved business processes.

Claims Processing Initiative: Rating Claims Pending Over 2–Years

On April 19, 2013, VBA implemented a special initiative to address the oldest pending disability claims in the current backlog. VBA stated the intent of the initiative was to work all claims pending for more than 2 years within 60 days, beginning April 19, 2013. VAROs were directed to devote all RVSRs and as many Veterans Service Representatives as needed to ensure all claims pending over 2-year old were processed and completed. According to VBA, RVSRs were to immediately process the 2-year old claims based on the available evidence in the veterans' claims folders. Further, rating decisions produced were to be considered provisional ratings unless all evidence in support of the claims had already been received (and the claim was considered ready-to-rate) or the ratings assigned provided the highest evaluation for the particular diagnostic code for each claimed issue. However, if medical examination

reports or other Federal records were needed, these older claims could not be processed as provisional rating decisions.

During one review errors were identified at the Los Angeles VARO when leadership provided conflicting guidance on the proper procedures for processing provisional rating decisions. We determined 10 (91 percent) of 11 provisional rating decisions we reviewed were not compliant with VBA's guidance related to the 2-year claims processing initiative. Eight of the 10 provisional decisions were determined to be non-compliant because the rating decisions were made without supporting VA medical examinations as required. One claim was decided without Service Treatment Records, which are considered Federal records and must be obtained by VARO staff prior to rendering a provisional rating decision. In the remaining case, the provisional rating was controlled by a future diary that scheduled the claim for review in 2 years instead of 1 year as required.

Requiring a rating decision to be rendered before a medical examination is obtained as a basis for a decision is in conflict with VBA policy. On May 14, 2013, conflicting guidance was sent to the Los Angeles VARO staff via an e-mail from the VARO Director's office. The guidance incorrectly stated all 2-year old cases requiring a medical examination must have the medical examinations ordered by May 15, 2013. This conflicts with VBA guidance because if a medical examination was required to decide a claim, the claim could not be completed as a provisional decision until staff obtained the necessary medical examinations. The guidance also incorrectly indicated that any claims with medical examinations not completed by June 3, 2013, were to be decided by a provisional rating.

We are concerned similar errors may exist among other provisional rating decisions completed by the Los Angeles VARO after the conflicting guidance was issued. VBA provided data that revealed the Los Angeles VARO completed 532 provisional rating decisions between April 19–June 19, 2013. VARO staff completed 470 of those 532 provisional decisions claims after the conflicting guidance was disseminated on May 14, 2013. All 10 provisional rating decisions that we identified as non-compliant were completed after this date. We recommended that VBA review all of the provisional rating decisions completed by the Los Angeles VARO after the conflicting guidance was issued to ensure they are accurate.

Veterans Benefits Management System (VBMS)

VBA and VA's Office of Information and Technology (OI&T) are jointly developing VBMS, which is a web-based paperless claims processing system. As one of VBA's main transformational initiatives, VBMS is designed to assist VA in eliminating the claims backlog and serve as the enabling technology for quicker, more accurate, and integrated claims processing in the future.

Over the past several years, the OIG has repeatedly reported deficiencies concerning the development, testing, and deployment of major systems throughout the department. In February 2013, we reported that because of system complexities and the incremental software development approach VA chose, VBMS had not been fully developed to the extent that its capability to process claims from initial application through review, rating, and award, to bene-

fits delivery could be sufficiently evaluated.9 Thus we concluded that, as of September 2012, VA had not fully tested VBMS.

In February 2013, the OIG launched a follow-up audit of VBMS to determine whether VA is effectively managing VBMS development and whether the project is positioned to meet schedule, costs, and performance goals. We expect to complete our audit in March 2014. Currently, VBMS has one pilot site that provides the capability to process claims from initial application through review, rating, award, to benefits delivery. VBMS also continues to suffer from system performance issues forcing users to rely on legacy systems to process claims.

In June 2013, VBA completed its implementation strategy to install VBMS at all VAROs. After the rollout of VBMS, VBA's inventory of pending claims was just under 797,000 and took an average of 238 days to complete. By the end of FY 2013, VBA had reduced its inventory of pending claims by 10 percent and reduced the average days to complete by 58 days. We cannot determine if the reduction in the pending inventory or the improvement in claims processing timeliness is related to VBMS or to one of VBA's many improvement initiatives.

In our recent inspections of the Houston, Newark, and Milwaukee VAROs, 25 staff provided us a user perspective of VBMS. Generally, staff expressed frustration with the system in part because of spontaneous system shut-downs, latency issues related to slow times to download documents such as medical evidence for review, longer times to review electronic evidence, mislabeled electronic evidence, and mixing evidence from one veteran's electronic file with another veteran's.

Given concerns raised at VAROs and complaints received through the OIG Hotline, we initiated a review of the accuracy of rating decisions completed using VBMS. We want to determine if the automation initiative will be effective in assisting VBA in meeting its goal of eliminating the disability claims backlog and improving the accuracy and consistency of rating decisions. We expect to report on our findings in early 2014.

Conclusion

VBA continues to face challenges in improving the accuracy and timeliness of disability claims decisions and maintaining efficient VARO operations. Our inspections and audit work consistently has shown that VAROs do not always comply with VBA's national policy to accomplish their benefits delivery mission. Claims processing and operational problems result in not only added burdens and delayed or incorrect payments to veterans, they also mean wasted Government funds through improper payments that VBA will not likely recover. While VBA made some incremental progress through its own initiatives and in response to our prior report recommendations, more work remains to be done. We will continue to look for ways to promote improvements in benefits delivery operations during our future nationwide audits and VARO inspections.

Mr. Chairman, this concludes my statement. We would be pleased to answer any questions that you or other Members of the Committee may have.

Mr. RUNYAN. Thank you, Ms. McCauley. And I will begin a round of questions with myself. And the first question probably for Mr. Murphy, and Ms. McCauley I will have you both kind of touch on it. And it precisely touches on one word here: accuracy. Mr. Murphy, VA uses the term accuracy frequently. Today we have heard from veterans, representatives of veterans, VSOs, and VA Office of the Inspector General, who indicated that claims are not being correctly decided at a very high incidence. The files lack proper development and the medical examinations are not adequate. VA OIG added that our VSRs are not consistently returning adequate medical reports to VA facilities as required due to pressure to meet production requirements.

In a moment I would like you to explain in detail how VA calculates and represents a 91 claims-based accuracy. I find VA's representations of accuracy to be even more concerning when you state that VA's TBI accuracy to be over 92 percent. VA OIG, who is specifically tasked to perform quality reviews of TBI claims, reports that over 30 percent of cases nationally, employees are not compliant with VBA policy, with individual ROs showing error rates as high as 50 percent.

So here is the question. Does accurate by VA standards mean that the veteran received the correct rating decision for the claimed conditions upon full and proper development of the claim? And if accurate indicates anything less than this, what does it mean?

Mr. MURPHY. Accuracy means exactly what you said, Mr. Chairman. Did the veteran receive the proper benefit entitlement payment or decision in the case of a denial? That is the measure of accuracy conducted by our quality analysis staff in Nashville and reported out. That is what the 91 percent means. That number is drawn from a true statistically valid nationwide sample, random sample, applied to all regional offices, collected into Nashville each month, evaluated, returned to the regional office, and then summed up on a rolling 12-month average.

Mr. RUNYAN. Why do we have a discrepancy with the OIG numbers then?

Mr. MURPHY. The IG and VBA do not measure what an error is exactly the same way. I look at an error as did the benefit entitlement be wrong, number one? And the IG tends to look at it from the standpoint of did you follow the process? If you varied from the process but you got the benefit entitlement decision right, I will not call that one an error. However, the IG will.

But there is something more important that you need to hear and it is a quote from the IG report which says, "We sample claims we consider at higher risk of processing errors. Thus these results do not represent the overall accuracy of disability claims processing at this VA regional office." This is the page from the title of the IG report. There is one of these in each report.

My point is this: the IG by design targets a specific subset of known high errors. If you take that number and extrapolate it out to, say, the entire regional offices this way, it is not an accurate representation of the sum of work for that regional office. I am not disputing that is an accurate representation for the subset that they looked at. But not for the totality of work that comes out of the regional office.

Mr. RUNYAN. No, but I am having the discussion, but we also broke it down to just TBI cases and your numbers conflict there.

Mr. MURPHY. Yes, our numbers conflict there. The IG's reports that you are looking at here are a sum of several years worth of work. The numbers I am giving you are a sum of the last 90 days worth of work. My point is this. When you look at current, where we were and where we are, the IG report is much more reflective of where we were, not necessarily where we are sitting right now today.

Mr. RUNYAN. Ms. McCauley, can you respond to that?

Ms. MCCAULEY. Yes. The numbers for TBI that we reported they are 31 percent error rate, that was based on our first round of inspections from 2009 to 2012. More recently we found a 29 percent error rate and that was for our fiscal year 2013 inspections. As Mr. Murphy, suggested we do look at specific high-risk type of claims. And so we are not looking across all the different kinds of claims to come up with an accuracy rate, but rather to focus in on those such as TBI or temporary 100 percent disability evaluations that have shown repeatedly to have a high error rate.

Also, there is a big difference in terms of how we call errors and how VBA calls errors. We do not focus just on the benefits entitlements amounts. When we look at the claims, we look at the processing of the claim, human error, system error, processing error, did they follow regulations—all of that goes into the accuracy of a claim. Sometimes the benefits entitlement might be correct for the moment, but sometimes there are errors that are made that could have potential impact on benefits down the road, future benefits for the veteran. So we look at the totality of the claims processing exercise.

Mr. RUNYAN. One more question. Talking about how you compile statistics, does the VA keep track of accuracy an appeal rate by the number of years of experience by the RVSR or the DRO?

Mr. MURPHY. Accurate from the standpoint of I can go back to my office and give you a report that says this, no I do not report it out that way on a routine basis. However, in determining the training that we are doing, the types of training that we are doing, where we are spending our effort, where the errors, the high concentration of errors are, I use that data every single day to determine exactly what training I need to be doing, where I need to be concentrating it, even down to the regional office level. And by tracking and looking at errors at an issued based level, which we started doing more than a year ago at this point, I now have the ability to go in and say TBI is a high error rate in a particular regional office and target just the raters that work TBI, as an example.

So to give you back to the office and give you a report and say here it is, no, I do not track it that way. However, in all of our training process and everything else that we do, that information is considered on a regular basis.

Mr. RUNYAN. But what I, where my head is on this is is it because of a lack of experience at some level? It came up in the last panel, that maybe we do not even have enough people with the experience to be able to rate these things. Is that trackable in your statistics?

Mr. MURPHY. Let me go back to your first question, Mr. Chairman. This is an excerpt from the Waco report. It talks about traumatic brain injury, reviewed 30 cases. Cases in error that affect veterans' benefits: zero. Potential to affect veterans' benefits, the difference of rules between how the IG looks at it and how I look at it, is eight out of 30. There is the 30 percent error rate that you are talking about. Did the veteran receive the right check based on what they had? Yes. Was there maybe a process that was done different but they got the right benefit entitlement check? Yes. An error in the IG's eyes, but when you look at that from the veteran focus that was the right decision and the right compensation was received by that veteran.

Mr. RUNYAN. We always have, what I am just trying to ask is it possible to find the analysis of does someone that has more experience in, say a certain regional office has more experienced personnel in it, are you getting a better outcome there?

Mr. MURPHY. Are we getting a better output in the——

Mr. RUNYAN. With experience——

Mr. MURPHY. Yes.

Mr. RUNYAN. —of the claim adjudicator?

Mr. MURPHY. Yes, you are. No question.

Mr. RUNYAN. You track that?

Mr. MURPHY. We track that. In fact, we did a what we call a consistency study the first week of August. And we broke it down with six questions that were sent out to all people. This one happened to be on, I think it was diabetes, yes. And what we did is we broke it down by lanes, we broke it down for the quality review teams for the STARS staff, and I laid all of the different segmented populations of work lanes. And by a long shot, meaning in the mid to high 90 percent range, the special operations lane got those questions right at a much higher percentage, at the 93 or 94 percent rate, where the average for the total population was in the mid-eighties. The point being that the higher experience level, the better education, the more training that we are doing with those individuals, is yielding better results, more consistent results of higher quality. At the same time we are concentrating those more trained, more experienced people on the most complex conditions that we are dealing with.

Mr. RUNYAN. If at all possible I would like to have staff be able to reach out to you and maybe take a look at those numbers?

Mr. MURPHY. Yes, sir. I would be happy to provide that.

Mr. RUNYAN. I appreciate that. And I recognize the Ranking Member Ms. Titus.

Ms. TITUS. Thank you, Mr. Chairman. I would like to look at those numbers, too, if we can get them back, try to get some sense of or some order to them.

Mr. Murphy, I have been talking about pay as you rate a good bit today because I think it fits in with this notion of the three different lanes and how to deal with complex cases. And we know that the VA has the authority to do pay as you rate. And I wonder if you would talk about that? Talk about what the problems are, of why you do not use it more often. And is the problem of how VA compensates the people who make these decisions based on a full

claim decided, or a part claim, something we can address? That is, the concerns that were brought up in the previous panel about it.

Mr. MURPHY. The previous panel brought up comments about you did not get work credit for it so it was not work.

Ms. TITUS. Right.

Mr. MURPHY. Without going down and saying yes, that is right, no that is not right, let us take that as a base to talk about what we are putting in place actively right now. Which is exactly what you are describing. I receive a claim from a veteran that has got ten issues on it. I need to break that down into ten issues, and have maybe one rater rate ten, maybe have ten raters rate one each. But the point is this. Break it down into ten individual issues. Make rating decisions on those ten individual issues. And compensate the veteran if they are entitled to it as those rating decisions become, as they are made. And we move forward to do the other.

The problem with that is in the system we are working with right now today, that is very difficult to do. And there are some barriers in terms of it is much less efficient in the amount of time that it takes our overall process to rate ten individual issues at one each. The fixes that we are putting in place will allow that to go significantly faster. And then our intent is to do exactly that, which is rate by issue.

And so we understand what is in your bill. We have testified on that previously, that we agreed with that bill in concept. But at this point in time there were some complications due to our system limitations.

Ms. TITUS. Well when do you anticipate that those changes will be made?

Mr. MURPHY. I cannot put an exact date on it for you. But what I can tell you is every 90 days we do a new release at VBMS and I am not sure which one of those releases that some of these changes are in. One of the changes that is going in that is being piloted right now in one regional office is the VBMSA, or authorization module. And we need that in place in order to help these individual issues as they are decided to move through the system quicker. In other words, when I have the VBMS authorization module in place I will be able to process these individual issues without impacting the total system time.

Ms. TITUS. And will there be safeguards in place so that you do not just pay a veteran off for a few things and think he will go away, as opposed to really completing the entire claim?

Mr. MURPHY. Yes. We are looking at breaking this down so that it comes in as a single claim but it is posed in our system and we track it as though there are ten individual claims. So this is not just a, I am going to receive a claim and then I am going to break it up and process by issues. This is a true issue-based tracking, issue-based reporting, issued-based quality, everything.

Ms. TITUS. I know that some of the cases that are in the Reno office have been farmed out to other offices where they can be moved faster. If you start breaking a claim down so that some of the things are easy and some are more complex end up in different lanes, you are not going to end up in two different places, are you for your claim to be completely considered?

Mr. MURPHY. Well depending on Mr. Michaud's question just a little while ago about Centers of Excellence, we certainly need to consider whether those two issues that are in two different lanes even need to be in the same regional office. Why if we go with the concept of Centers of Excellence, and Detroit happens to be on issue number one and St. Petersburg issue number two, why would we not send that claim? Because it is seamless now once I have it in the electronic environment. I can move them around the country by just a few keystrokes. So we still do not have the final this is exactly how it is going to be, but we are exploring the options from how do I get it through our system right and fast?

Ms. TITUS. We just don't want to make it more difficult for our veterans to be able to track where their claim is or understand what's happening with it and when it's happening without scattering it around or making it more complicated.

Mr. MURPHY. Yes. And you're seeing that. You are—one of the information points I'm sure you're interested in is the number of cases you currently have broken up from the regional office. It's under ——

Ms. TITUS. That's right. And we're waiting for some of those answers.

Mr. MURPHY. It's just under 700 right now. And it's—you've heard what we are doing with the two-year-old claim and the one-year-old claim and now moving to the 334 days. If the capacity of the regional office isn't in place in order to meet the time lines that we're putting in to meet these different deliverables on the oldest claims, we're shipping them off to other regional offices.

In other words, we're making the oldest claim issue a national problem, and not one tied to a particular regional office. It just so happens that in Reno today, they happen to have a large number of the older claims, so we've sent those to other regional offices that have capacity to get those veterans done in a timely manner.

Ms. TITUS. Thank you.

Mr. RUNYAN. Thank you, gentle lady. And I'll recognize Mr. Michaud.

Mr. MICHAUD. Thank you, Mr. Chairman, and I want to thank this panel as well for your testimony today. Mr. Murphy, VBA currently adjudicates claims related to Camp Lejeune in Louisville, Kentucky, and claims related to radiation in Mobile, Alabama. Can you explain to the Committee why this is?

Mr. MURPHY. Well, those claims actually fall under the title of this hearing. They are complex claims. They are highly complex claims. And what we don't want to do is we don't want to have a veteran, because they went to Regional Office 1, get one decision—an equivalent case go to Regional Office 2 and get a different rating decision.

So in order to do that, in order to concentrate our efforts and because of the way we were doing claims in the paper world, we concentrated them in single places. We provided special training for the processors and raters that worked the claims, and then at the same time, we went back and worked with VHA and provided training to the individual C&P examiners that would be working these particular types of conditions and then sent that back to a

single, jointly trained rating board so we get a consistent, accurate output.

So those two areas are specialized in those particular ——

Mr. MICHAUD. Absolutely. Okay. For the OIG, Ms. McCauley, throughout your inspections on these difficult medical conditions, how often is training and a lack of knowledge regarding policies and procedures is a problem? How often is that?

Ms. MCCAULEY. It certainly has shown itself to be a problem as a result of our inspections. For example, in TBI, it's been said repeatedly today about the complexity of the policies for rating TBI claims. We did find that additional training was needed in the TBI area for the raters to be able to rate claims correctly, especially with regard to the issue of inadequate medical examinations—making sure they return them to the medical practitioners so that they get the adequate information they need to rate those claims.

Mr. MICHAUD. Okay. In consideration of your response, do you think a veteran would benefit from having teams where specialty—that are specially trained and focused on complex conditions such as TBI, MST, and PTSD, similar to what we just heard Mr. Murphy mention about Camp Lejeune and radiation in Mobile, Alabama?

Ms. MCCAULEY. Well, we haven't examined the issue of the specialized claims, but certainly additional training would be a help in terms of adjudicating those claims.

Mr. MICHAUD. So the better trained, the better specialized the workers are in the work that you have done, the more accurate they can and timeliness that they can process those particular claims?

Ms. MCCAULEY. We would expect that, yes.

Mr. MICHAUD. All right. Thank you. Mr. Murphy, just to follow-up on my previous questions about Camp Lejeune and Mobile, Alabama where you specialize in those particular areas, one of the problems I've seen over time being on this Committee is—and particularly in some regional offices where the error rate is over, as you heard the Chairman, over 50 percent. When you look at the turnover rate in those areas, they might not be an employer of choice, and you're constantly training individuals, and particularly with our veterans coming back from Iraq and Afghanistan with TBI and PTSD and MST issues, I think it's important that with the new VBMS system, I like the idea when you're looking at the medical conditions, because with the medical conditions you can move that anywhere around the country in a timely fashion. So if there is a certain regional office that is specialized, such as Camp Lejeune in Louisville, Kentucky, to deal with those issues, that they can get an accurate decision in a timely manner.

I understand some of the concerns that some of the VSOs might have that it's all not done in a regional office. Well, it's not done anyway when you look at a lot of the cases that are being brokered to other areas because they are not performing adequately. I would like to just, you know, see whether or not you would really consider looking at, you know, centers of excellence for those very complex cases since you can move it electronically once the VBMS system is up and completely running fully.

Mr. MURPHY. We would consider the centers of excellence concept. In fact, my staff is going through now, pulling numbers in terms of accuracy, rating capacity, et cetera, on regional offices right now to identify are there some clear outliers that say, this should be a COE for PTSD; this one should be for military sexual trauma; this one should be for TBI. So we're going through that process now. We're just beginning that process. It's not quick. It's going to take some time to do the—to make sure we get it right.

But if there are some centers of excellence that are doing it right out there now, there's some lessons for it. Number one is, should I make them the center for all over the country, and number two, if the answer is, no, I should not, then what are they doing different to get it right that I need to teach the other regional offices? So either way it goes, this analysis that we're doing is going to yield good things for us.

Back to the other part of your question which was the VSOs having some concern about them not being able to have that interaction and look at the file and review it. In the paper world that was a problem. In the electronic world with the stakeholder enterprise portal we have in place and the very shortly coming up releases which will allow them to see much more of the claim filed and the decision that is being made, they'll be able to perform that review from anywhere in the country, regardless of what regional office is working that file.

Mr. MICHAUD. I appreciate that answer because for me, I think our number one priority should be making sure the veteran is taken care of, not whether or not that claim is processed in a regional office, particularly if that regional office is not performing the way it should be. So thank you very much. Thank you, Mr. Chairman.

Mr. RUNYAN. Thank you, gentlemen, and I actually have another question. I know Mr. O'Rourke is going to come back. So Mr. Murphy, your testimony highlights that VBA has improved policies and procedures to ensure more timely and accurate decisions to veterans of complex claims.

Setting aside the discussion we just had about strong concerns on how VBA calculates accuracy, VA's work towards better policy and procedure is welcome. But what the Committee is hearing from the IG is that a regional officer repeatedly failing to comply with the policies that are in place, to auditors, directors, and managers, this can be a theoretical exercise, but to the veteran who is underrated or denied because a regional office is not compliant, this is a complete failure. And as I read the American Legion's testimony, for those and its quote: "For those veterans, VA's accuracy might as well be zero. The Inspector General consistently reports that the need for policy guidance, oversight training, and supervisory review, and yet 17 of 20 recently inspected offices remain or non-comply with VBA policies, most of which were found to be repeatedly out of compliance."

How are you going to enforce compliance or to put it another way, what will be the penalty for non-compliance?

Mr. MURPHY. I can't answer directly your question on what will be the penalty for non-compliance. That falls under the Office of Field Operation and Deputy Under Secretary Rubens. However, I

can tell you what we're doing to ensure compliance is happening. And the solution is not going out yelling at regional offices' directors and telling them you must solve the process. The solution is for me to put a system in place which takes them down that path, and the right way becomes the path of least resistance.

An example of how we're doing that today is, number one, I talked about how we changed the rules around PTSD, so we no longer had to go away and make a determination about the stressor and get a buddy statement saying, what happened? We changed the rules so that if the veteran came in and said I was in fear for my life, they served in a hostile environment, you order an exam and you assess them for PTSD. So that's the way we handle it from the rule side.

When I look at it from the what system am I putting in place to ensure at a grassroots level, I got to take this back to the temporary 100 percent. And the example there is, in the system we've put in place with VBMS, you can no longer just hit a button and move through a screen. You're forced to stop and put a routine future exam date in place and place that item under control before the rater is allowed to press the button and move to the next screen. The point is, I forced the behavior without having to go out and push and discuss and come back and reexamine. I know that it's happening, because I can track it and I can see it on my system, and I pull a report every two weeks. And that every two-week report, last year I was seeing 600 cases. Now I'm seeing 50 cases.

And the reason for that is, today there is somewhere in the neighborhood of 74, 75 percent of our cases are electronic through VBMS. We are still working through the last of the paper. So, as we move to the electronic environment, the compliance rate will go up and then I'll see that number drop over time.

So the answer to your question is I fix it by putting procedures in place that drive the RO in the right direction, and I put system fixes in place that force the behavior that we need to have to ensure the veteran gets the right decision.

Mr. RUNYAN. And before I yield to Mr. O'Rourke, I would remind you and remind everybody how many times Secretary Shinseki has sat there and talked about accountability, and how are we going to hold people accountable. And that's ultimately where we have to get to. You can do all the systematical stuff you want. If you're not motivating people to do it—I know they are highly motivated people; they want to do right by the veteran. But there's a lack of accountability there, and this is across the board. But, with that, I'll yield to Mr. O'Rourke.

Mr. *O'Rourke.* Mr. Chair, thank you. I apologize for missing part of the second half of the hearing, and I'll get an update from those who are here about how you responded to some of the specific issues raised by Mr. Price and Ms. McNutt, and the veteran service organizations that were here. But so just briefly I'll bring up two issues. One is in El Paso at Fort Bliss, we have 1,800 IDES cases; 1,100 of those are backlogged at the DRAS site in Seattle. And so, just a plea from Colonel Hymel at William Beaumont from us in our office representing those soldiers. You know, whatever you can do to provide additional attention and focus on that so that we can get those folks through there.

We have some associated problems with our Wounded Warrior transition unit there, and part of that is having these folks who are in this backlog disappear in the bureaucratic loop.

The second one, you know, Ms. Price mentioned that she filed a fully developed claim and took us through every part of what she went through to do that. You know, we've been pushing for fully developed claims filed on-line. We think that through things like the Faster Filing Act and other initiatives that have come out of this Committee, we can cut the wait time, which in El Paso right now for a typical veteran is 450 days out of the Waco Regional Office down to something like 100 or less.

So I want to just pick up on what Ms. Price said and I want you to address the concern that that raised with me and others, that there may be a problem will fully developed claims, and our ability to process them in a timely fashion and do so accurately.

Mr. MURPHY. Let me start with IDES. Yes, we understand exactly what you are talking about and with Fort Hood and Department of the Army——

Mr. *O'Rourke.* Fort Bliss.

Mr. MURPHY. Fort Bliss. Sorry.

Mr. *O'Rourke.* Yeah.

Mr. MURPHY. With Fort Bliss, and we put some definitive actions in place—that you'll see the numbers that are—that regional office, that DRAS site—start going in the right direction. First of which is in April, all of the employees at the Seattle D1BC—Day 1 Brokering Center. We shut down the Day 1 Brokering Center and rolled it into the IDES site. What that does is it gives them immediate trained capacity to go in and start working IDES cases.

Two, in May of 2013 we hired an additional 36 raters in that regional office. Now that sounds like, oh, they've been there since May, but the reality is they just started working last month, because they just completed challenge training and now they're in production, working in the DRAS, working cases.

In May of 2013, Army Reserve personnel were activated and deployed in Seattle to help the DRAS site in getting these IDES cases through quicker. Staff at the regional office has been working mandatory overtime from mid-May to November of this year, and right after the holidays they will resume mandatory overtime through 2014, provided the funding is available to us.

One other item that we've done with that is we had capacity in Providence to take some of those cases, because they were working faster. So 250 cases per month are being brokered to Providence in order to help take some of the pressure off of the DRAS site in Seattle. So I think in the coming months you're going to see drastic changes in there.

One other comment about the IDES process in general. To look at the IDES process and say it's merely a simple claim is to call a complex—is really a complex claim is to call a complex claim a simple one. My point is this: these are the most complex of complex cases for veterans that are still serving. They take additional care. They take additional requirement, and they take joint cooperation between the VA and the Department of Defense. As a result, a timely claim going through the IDES process is measured at 295

days, not the 125 days like we see for the traditional rating window.

The second part was about Ms. Price and the FDC, and I guess I'm not sure exactly what it is that you are asking me there, Congressman.

Mr. *O'Rourke.* Well, I guess the concern was—and I apologize again. I've missed almost everything that you've had to say in response to the stories that we heard earlier. So you may have already answered many of the concerns raised. But one of those among many that were raised was that Ms. Price, I believe before transitioning out, had already prepared and filed a fully developed claim and yet she had this incredibly arduous long battle to get that claim adjudicated in a satisfactory way. And so it causes concern for me and others when we're trying to direct veterans to file those fully developed claims on-line and we're telling them that they can get those claims resolved. And in some cases, and I think the majority of cases, close to 100 days versus the average pass of 450 days, a story like Ms. Price's gives me some pause, and I just want to know whether that is truly exceptional, or whether there is more to that. And she seemed to indicate from other veterans that she had met with and assisted that she's seeing similar cases to hers.

And so, just wanted to get your quick feedback on that, and again, if you've already answered it or you'd like to answer it in more detail at a follow-up meeting, I'd be happy to meet with you then. But if you could just quickly talk about how exceptional a case like that is.

Mr. MURPHY. I have to stay off discussing an individual veteran and that veteran's circumstances. But what I can tell you is this: based on the time frame that Ms. Price submitted her claim, 2009, when we were receiving fully developed claims at less than two percent, to today we are receiving 27 percent of those claims. They are going through with our highest priority and they're being tracked and monitored on a national basis at a national level.

So my point is this: the experience that she saw is by no means typical of the process you are seeing today when the claims are going through in 115–120 days, through the fully developed claim process.

Other things that have happened is in the very early stages of it we had a high rate of those claims that were entered into the fully developed claim process and for various reasons—right, wrong, or otherwise—were removed from that process and put through the normal channel. We track and monitor that routinely now to make sure that a fully developed claim that comes in maintains its path through the fully developed claim process.

There are specific rules that will pull that claim out of that process. But now that we've put these controlled measures in place, it's not being used or abused—it's not being used to the rate it was when the fully developed claim program was new.

Mr. *O'Rourke.* Okay. Thank you. My time has expired, Mr. Chair. I'll yield back. Thank you.

Mr. RUNYAN. Thank the gentleman. Any members have any further questions? No? On behalf of the Subcommittee, I thank you all

for your testimony. You are now excused. I thank everyone for being here with us today.

Ensuring that our veterans receive timely and appropriate decisions regarding their service-connected claims is a top priority for both this Committee and the Department. It is unacceptable for the price that is—timeliness to be the accuracy of those decisions, and we'll certainly be seeking more information in the near future on areas discussed as VA continues to march towards the Secretary's 2015 goals.

I'd like to once again thank our witnesses for being here today. I just announce consent that Members have five Legislative days to revise and extend their remarks and include any extraneous material.

Hearing no objections, so ordered. Thank the Members for their attendance today, and this hearing is adjourned.

[Whereupon, at 6:16 p.m., the subcommittee was adjourned.]

APPENDIX

STATEMENT BY JEFFREY C. HALL ON DISABLED AMERICAN VETERANS

Chairman Runyan, Ranking Member Titus and Members of the Subcommittee:

On behalf of the DAV (Disabled American Veterans) and our 1.2 million members, all of whom are wartime wounded and injured veterans, thank you for asking DAV to submit testimony for the record on the Department of Veterans Affairs' (VA) adjudication of complex disability claims and ensuring quality, accuracy, and consistency on complicated issues. As the nation's leading veterans service organization (VSO) assisting veterans seeking disability compensation and other benefits, DAV has tremendous experience and expertise relating to the processing of claims as well as the various ways veterans may appeal adverse actions and decisions.

Mr. Chairman, for the first time in years, some good news is coming out of the Veterans Benefits Administration (VBA) in regard to the backlog of veterans' disability compensation and pension claims. Despite a partial government shutdown that disrupted progress for most of October 2013, VBA appears to have finally turned a corner for the first time in more than two decades. However, despite the laudable progress and milestones that have been achieved, significant work remains to be done before VBA can hope to completely eliminate the backlog and reform the claims processing system so that every claim is done right the first time, including the most complicated claims.

At the beginning of 2013, there were more than 860,000 pending claims for disability compensation and pension. By the end of the year, that number had dropped by more than 20 percent, down to about 693,000 pending, a reduction of more than 20 percent. The number of claims in the backlog – greater than 125 days pending – dropped by more than a third, from over 611,000 in January 2013 to less than 392,000 at present. VBA also increased the number of claims completed each month from an average of about 89,000 during the first four months of the year to more than 110,000 over the final eight months of the year; however the cause is unclear. VBA also reports that the average days for rating pending claims has dropped this year from 280 days to under 180 days, and there are virtually no claims remaining that have been pending for more than a year.

The most important factor driving VBA's productivity gains was undoubtedly the policy of mandatory overtime for claims processors that ran from May through November. During this six month stretch, VBA achieved significant boosts in the number of completed claims per month, reaching as high as129,488 in August, before dropping back down during the shutdown and after mandatory overtime ended before Thanksgiving. The other key factors boosting claims production were likely the increased focus on fully developed claims (FDC), which rose to more than 12 percent of VBA's claims inventory, and the continued professional development of VBA's newest employees hired during the past five years. Although VBA finished the roll out of both Veterans Benefits Management System (VBMS) and the new Transformation Organizational Model (TOM)

last year, this likely had only a marginal influence on productivity increases last year since there is a learning curve that both employees and management must complete before they reach their full productive potential with new systems.

While the drop in the backlog was certainly good news, even more encouraging was the steady increase in the accuracy of claims produced throughout the year, as measured by the Systematic Technical Accuracy Review (STAR) teams. According to VBA, their 12-month measure for rating claims accuracy rose from 85.7 percent at the beginning of the year to nearly 90 percent by the end of November. Although this remains far from the 98 percent accuracy goal put forward by the Secretary, it is a significant improvement. As VBA officials regularly point out, however, when using an issue-based standard, rather than claims-based since one claim may contain many separate issues, the accuracy rate is even higher, approaching 97% during the final months of 2013.

There are several likely causes for the increased accuracy of rating claims. First, statutory and regulatory changes have eliminated virtually all errors related to the duty to notify veterans of their rights under the Veterans Claims Assistance Act (VCAA), since the required notice is now included on the application form itself. Inadequate VCAA notice had historically been one of the largest categories of STAR errors Second, the use of VBMS has automated many of the required development steps required to properly prepare a claim to be rated, such as scheduling compensation exams and routine future examinations, thereby reducing the number of these types of errors by more than 50 percent. Third, rating calculators and other automation tools have helped to prevent inaccurate ratings because the system will not accept disability evaluation levels outside certain parameters established for each diagnostic code. Finally, VBA's new Quality Review Teams (QRTs) have had a positive effect on the quality and accuracy of ratings.

All of this progress comes after four years of comprehensive transformation – that included implementation of new organizational and operating processes, new IT systems, and new training, testing and quality control regimes – all designed to reach the Secretary's ambitious goals for 2015 of all claims within 125 days with 98 percent claims accuracy.

One of the cornerstones of this transformation is the TOM, which is based upon the segmentation of claims based on their complexity. At the beginning of the new process, VBA's traditional triage function has been replaced with a new Intake Processing Center that puts an experienced Veterans Service Representative (VSR) at the front end of the process to divide claims along three separate "lanes:" "Express," "Core," and "Special Ops." The Express Lane is for claims that are less difficult, such as those that are fully developed or those containing one or two issues, etc. The Core Lane is for processing claims involving three to seven contentions, as well as claims for individual unemployability. And the Special Ops Lane is for more difficult claims, such as those with eight or more contentions, long-standing pending claims; complex conditions, such as traumatic brain injury (TBI), post-traumatic stress disorder (PTSD), military sexual trauma (MST), special monthly

compensation (SMC), and other claims requiring extensive time and expertise.

VBA estimates that about 30 percent of claims will be processed through the Express lane, about 60 percent through the Core lane and about 10 percent through the Special Ops lane. In each of these lanes, integrated teams comprised of VSRs, RVSRs and Decision Review Officers (DROs) work in close proximity so that they can better coordinate their efforts and increase production. Although there have been increases in both production and quality over the past year using the TOM, VBA must regularly measure, carefully analyze and continually improve its new operating procedures to fix problems and maximize efficiencies. We have been particularly interested to learn whether VBA might be tempted to more resources and personnel in the Express Lane as a tactic to generate greater production and artificially lower the pending backlog of claims. While such a redistribution of VBA resources would allow VBA to move a larger number of simple claims more quickly and thus lower the number of pending claims, it would force much longer delays on veterans awaiting decisions on the more complex claims, including those with eight or more contentions, or those suffering from PTSD.

DAV recently surveyed a number of our National Service Offices to learn more about how VA Regional Offices (VARO) were distributing their personnel among the lanes and found wide variations. For example, at one VARO, the distribution of VSRs and Rating Veterans Service Representatives (RVSR) among the lanes was 31 percent in the Express, 56 percent in the Core and 13 percent in the Special Ops. At a similar sized VARO, the distribution was 48 percent in the Express, 22 percent in the Core and 30 percent in the Special Ops. While the needs in each particular VARO differ, there is clearly a disparity in the amount of personnel assigned to a particular lane. In some VAROs, DAV's National Service Officers (NSOs) observed that the distribution appeared to be reasonable based on their observations of the makeup of that particular VARO's workload, while others observed understaffing of one or more of the segmented lanes. Others commented that too often VARO personnel were being shifted from one lane to another based upon the current month's priority. It is essential that VBA be aware of such wide ranging differences among VAROs, analyze both workload data and the distribution of resources, and ensure that sufficient personnel are being assigned to each of the lanes, particularly the more complicated claims that require greater time and expertise.

According to VBA, employees working within the Special Ops Lane are individuals who possess the highest skill level, and are required to complete an additional 20 plus hours of training and testing on more complex issues such as TBI and MST to ensure accuracy when preparing a rating. Additionally, all ratings in the Special Ops Lane require a second signature until the RVSR has demonstrated a 90 percent accuracy with consistency. While the exact number of necessary personnel assigned to handle the more complex claims like TBI, PTSD, etc., within the Special Ops Lane, or their respective experience level is difficult to ascertain, DAV be-

lieves these individuals should be the more experienced and skilled employees, particularly RVSRs.

Another concern expressed by some of DAV's NSOs was that VBA was sometimes placing claims in the wrong lanes: complex claims going through the Core lane or too many multi-issue claims being directed to the Express lane. In order to prevent these errors in directing claims to the right lane, VBA must ensure that the personnel at the Intake Processing Center of each VARO have the proper training and experience required to make these crucial decisions.

A related concern we have is that VBA may be neglecting the preparation of claims awaiting certification to the Board of Veterans' Appeals. There have been reports that some VAROs have redirected some VSRs and RVSRs who normally work on preparing appeals instead to work only on claims that contribute to lowering the backlog. Again, such an approach may yield short-term gains in reducing the claims backlog, but it will have longer term negative consequences for the growing backlog of appeals, which now stands at more than 266,000.

In order to continue incentivizing quality and accuracy along each track, especially the Special Ops lane for complicated claims, VBA must also ensure that performance standards are adjusted appropriately for VSRs' and RVSRs' work on each of the different tracks within the new organizational model. Production standards for VSRs and RVSRs handling the simplest claims must be different from those handling the most complex, which take more time per claim. Employees handling complex Special Ops claims should not be held to the same performance levels in terms of claims completed per day as those handling simpler Express claims.

Understanding that this model will continue to change as technology evolves concurrently, it would be wise for VBA to consult with the American Federation of Government Employees (AFGE) and other labor representatives in developing a mutually acceptable framework for quickly adjusting performance standards in the future as conditions merit. As new processes and technologies come online, it is imperative that VBA be able to make timely adjustments to performance standards to ensure that production pressures do not outweigh the goals of accuracy and quality. DAV believes that VBA must develop a scientific methodology for measuring the resources (primarily personnel) required to accurately and timely process the current and future anticipated workload, as well as a new model for allocating those resources among VA regional offices.

One of the keys to reducing the backlog has been and will continue to be the FDC program. DAV continues to actively support the FDC program and by the end of fiscal year 2013, nearly 25 percent of all claims submitted to VBA were filed through the FDC program. This approach not only lowers the burden on VBA employees, it also results in faster and more accurate claims decisions for veterans. However, we recognize that not all claims can be filed as "fully developed" and VBA must continue to maintain and improve the manner in which it processes complex claims.

Mr. Chairman, in order for VBA to complete the transformation, end the backlog and decide each claim right the first time, it must develop and inculcate a new work culture based on quality and accountability. At a time when so much national attention has been focused on reducing the number of claims pending in the backlog, VBA must continue to place at least equal emphasis on quality and accuracy, rather than just speed and production. In fact, accurately deciding a veteran's claim for disability should never compromised or sacrificed for the sake of productivity. DAV has and always will maintain the VBA's attention and focus should be on generating decisions that are right the first time. This particularly applies to those claims that are more complex and complicated.

Unfortunately, most of the metrics that VBA employs today are based primarily on measures of production, rather than quality. For example, the most common way to measure the VBA's progress is through its Monday Morning Workload Reports, which contain measures of production, but not accuracy or quality. Another major tool used to review VBA's status is its "Aspire Dashboard," which provides current performance statistics for each VARO, and provides national totals. Like the Monday Morning Reports, however, the Aspire Dashboard metrics are primarily related to pending work inventory and production times, with only a few measures of accuracy included. VBA must develop new and realistic metrics and performance measures at every level in the process: from claims processors to regional office management to central office leadership.

VBA must continue to make the changes to its work culture so that quality and accuracy are the cornerstones of all their activities, especially in dealing with complex claims. DAV believes that VBA's creation of Quality Review Teams was a powerful statement of VBA's commitment to quality. QRTs perform several functions: they conduct local quality reviews, perform in-process reviews and provide select training. In particular, the in-process reviews, often referred to as "mulligan reviews," allow errors to be corrected before they negatively affect a rating decision, and without penalizing the VBA employee. VBA must continually evaluate and improve its training, testing, and quality control programs in order to truly reform the claims system over the long term.

Another key to changing VBA's culture is how well they invest in the training, testing and professional development of its workforce. Over the past several years, VBA has reengineered its "challenge" training program for new employees, which consists of four weeks of in-station training via "live meeting" software, followed by four weeks of in-residence training at the Baltimore academy or other centralized locations around the country. Every employee is also required to complete continuing training of 85 hours per year coupled with required testing. In addition, VBA has developed a new training program called Station Enhancement Training (SET), which requires all employees at targeted poor performing VAROs to undergo comprehensive training together for one week. First begun at some of VBA's lowest performing stations, including Oakland, Los Angeles and Baltimore, SET allows employees to review and refresh their knowledge, while also providing structured time to work live cases under the supervision of the training staff. VBA

has reported that SET training not only increased quality, it also boosted morale of employees and VBA expects to continue SET training in 2014.

Finally, VBA's transformation strategy depends on the successful implementation of new technology, including the VBMS, the Stakeholder Enterprise Portal (SEP), an expanded e-Benefits system with VONAPPS Direct Connect (VDC), and the Virtual Lifetime Electronic Record (VLER) initiative. In terms of processing claims, the most important technology is VBMS, the paperless, rules-based system that VBA uses to create electronic claims files, manage workflow and determine ratings. VBA was able to complete implementation of VBMS ahead of schedule in June and by the end of 2013, nearly all of VBA's pending claims were processed using electronic files. Going forward, VBA must continue to receive and allocate sufficient funding for scanning paper claims forms and evidence, including the back-scanning legacy files, and must monitor and work to improve the quality of the scanned documents.

It is also vitally important to recognize that no modern IT system or software is ever truly "finished," In addition to the funding required for maintenance of the VBMS system, VBA must continue to make significant investments in VBMS development for as long as this system is capable of meeting VBA's needs. The coding and embedding of rating calculators inside VBMS, for example, remains a labor-intensive, time-consuming process and one that will continue as the VA Schedule for Rating Disabilities (VASRD) is continually updated in the future. Furthermore, as new IT technologies emerge, and new requirements for VBA are identified, VBMS must evolve to address those needs and opportunities, and that will require an aggressive development program that has sufficient resources. At the same time, VBMS must be carefully developed to ensure that it also provides sufficient support for complex claims that are not easily done through automated and rules-based processes.

Mr. Chairman, while VBA should be commended for the progress made in reducing the backlog of pending claims, now is not the time for them or Congress to shift any resources or attention away from their longstanding problems in processing claims accurately and timely. DAV believes VBA's new organizational model of segmented lanes is moving in the right direction but there is still work to be one to ensure greater consistency and efficiency throughout all VAROs.

By their very nature, complex claims are more difficult to process from the development stage through final rating. VBA must ensure that they assign the most skilled and experienced individuals to process these claims as well as those at the front end responsible for assigning claims to the proper lanes. Ultimately, the success of VBA's transformation will not be judged on how well they process the large number of simple claims, but on how accurately and quickly they adjudicate the most complex claims. Getting all claims decisions right the first time is the only fair and equitable way to treat to our nation's veterans, their dependents and survivors. Anything less is unacceptable.

Mr. Chairman, this concludes my testimony. I would be happy to answer any questions you or the Subcommittee.

PATRICIA DRISCOLL ON THE ARMED FORCES FOUNDATION

Chairman Runyan, Ranking Member Titus, and Distinguished Members of the Committee, on behalf of the Armed Forces Foundation (AFF), I would like to thank you for the opportunity to share our views regarding the work the AFF does for recently separated service members suffering from the invisible wounds of war.

The Armed Forces Foundation is a 501(c)3 non-profit dedicated to supporting and advocating for active-duty military personnel, National Guardsmen, Reservists, military families, and veterans. The AFF returns 95 cents of every dollar raised to service members and their families through our programs. Since 2001, the AFF has provided more than $75 million in assistance by covering travel, hotel rooms, home mortgages, car payments and everyday bills for families to be able to stay at their loved ones' sides during treatment and recovery from wounds suffered during war. With the launch of our Help Save Our Troops campaign, the AFF proactively educates Americans about the hidden wounds of war, including Post-Traumatic Stress Disorder (PTSD) and Traumatic Brain Injury (TBI), and advocates for those troops and veterans who have suffered these hidden wounds. The ultimate goal of Help Save Our Troops is to reduce military suicides. Through this campaign, the AFF provides counseling services for military families, including children, grants for therapy and addiction counseling, and runs a variety of recreation group therapy programs to boost morale amongst service members, veterans, and their families.

The program I would like to highlight today is the C.W. Bill and Beverly Young Financial Assistance Fund, the largest program administered by the AFF. The Fund provides direct financial assistance to service members, veterans, and their families facing financial hardship due to injuries and other service-related situations. With the ability to provide money to service members and their families from all branches of service, the Foundation makes a valued impact on the lives of those who serve the United States.

Due to the increasing number of recent veterans, the Foundation is unable to fill all requests for assistance. Currently, the AFF is only able to fulfill 18 percent of all requests made. This is why our Board has limited the parameters of the Fund to active-duty service members, reservists, guardsmen, and service members who have separated from the service within the past 18 months. Additionally, the Board has established we distribute, each year, at least 90 percent of our funds raised. We do not sit on the cash that is donated.

Since the Fund's inception, millions have been distributed in the form of direct financial grants. Cases are reviewed on a monthly basis and payments are made directly to creditors or in the form of gift cards to in order for veterans to provide the basic essentials for their families.

Of the cases reviewed thus far in 2013, 35 percent of grants awarded have gone to recently separated service members. Of these cases, exactly 50 percent have been diagnosed with Post-Traumatic Stress Disorder (PTSD), Traumatic Brain Injury (TBI), or both.

These statistics are startling to me, given the fact the National Institute of Health estimates 1 in 5 veterans of OIF/OEF suffer

from PTSD. Even more troubling is the recent VA IG report findings that VA offices are not handling PTSD cases correctly.

With the ever growing backlog of VA claims and the inability to process these complex claims correctly, our nation's veterans are struggling at home to pay their bills and put food on the table.

This is where the AFF is proud to step up and fill the gap as veterans' claims are in limbo. As PTSD diagnoses increase each year, so to do the requests for financial grants, as more time lapses before a rating is assigned to veterans suffering from the invisible wounds of war.

Again, the AFF would like to thank you for the opportunity to present our thoughts on this important issue that many veterans face. We look forward to working with this Committee to find a solution to the problems being pushed onto veterans.

STATEMENT OF THE TRAGEDY ASSISTANCE PROGRAM FOR SURVIVORS (TAPS)

Hearing: "Adjudicating VA's Most Complex Disability Claims: Ensuring Quality, Accuracy and Consistency on Complicated Issues"

We are pleased to have the opportunity to submit this testimony on behalf of the Tragedy Assistance Program for Survivors (TAPS).

TAPS is the national organization providing compassionate care for the families of America's fallen military heroes. TAPS provides peer-based emotional support, grief and trauma resources, grief seminars and retreats for adults, Good Grief Camps for children, online and in-person care groups, casework assistance, connections to community-based care, and a 24/7 resource and information help line for all who have been affected by a death in the Armed Forces. Services are provided to families at no cost to them. We do all of this without financial support from the Department of Defense. TAPS is funded by the generosity of the American people.

TAPS was founded in 1994 by a group of surviving families following the deaths of their loved ones in a military plane crash. Since then, TAPS has offered comfort and care to more than 40,000 people. The journey through grief following a military death can be isolating and the long-term impact of grief is often not understood in our society today. On average, it takes a person experiencing a traumatic loss five to seven years to reach his or her "new normal."

TAPS has extensive contact with the surviving families of America's fallen military service members, making TAPS uniquely qualified to comment on issues affecting the survivors left behind. TAPS received an average of 13 newly bereaved survivors per day in 2012. Survivors are referred to TAPS through our relationships with the Armed Services casualty assistance officers and direct contact from those who are grieving the death of someone who died while serving the Armed Forces.

In 2012, 4,807 new survivors came to TAPS for comfort and care. In 2013, the number of newly-bereaved military families coming to TAPS for care and support continues to climb. Between January 1 and October 24, 2013, TAPS sadly welcomed 3,471 newly bereaved survivors for care and support. Causes of death were reported as follows by military families turning to TAPS for help and support:

Suicide or suicide suspected22.88 % (794)
Hostile action/killed in action/Navy Yard shooting22.47 % (780)
Accident – auto/aviation/other22.13 % (768)
Sudden illness17.11 % (594)
Unknown cause of death10.89 % (378)
Homicide 2.74 % (95)
Non-hostile/non-combat incidents 1.73 % (60)
Friendly-fire 0.06 % (2)

We would like to submit the following statement on adjudicating VA's most complex disability claims.

Survivor benefits are intrinsically linked to veteran disability claims filed with the Department of Veterans Affairs (VA). Eligibility for VA survivor benefits for the surviving spouse and/or children hinges on establishing a military service connection to the cause of death. When a service connection is not recognized by the VA, the surviving spouse and/or children will often struggle to obtain survivor benefits.

These benefits and services provided by the VA for spouses, children and parents of service members and veterans are significant and can directly impact the quality of life for survivors. These benefits can include: dependency and indemnity compensation, parents' dependency and indemnity compensation, survivors' pension, the dependents' educational assistance program, the post-9/11 G Bill: Marine Gunnery Sergeant John David Fry Scholarship program, and home loans. Survivors can also receive the following services from the VA if they are eligible: educational and vocational counseling, beneficiary financial counseling, civil service preference, commissary and exchange privileges, and fiduciary services.

The following data is from the quarterly Monday Morning Workload Reports published online by the Veterans Benefits Administration (http://www.vba.va.gov/reports/mmwr/).

The following data is from the quarterly Monday Morning Workload Reports published online by the Veterans Benefits Administration (http://www.vba.va.gov/reports/mmwr/).

VA MMWR Reports		Number pending	Number pending over 125 days	Percentage pending 125 days or more
Initial claims from surviving spouses, children or parents	Dec 2, 2013	7,886	1,996	25.3%
	Sep 30, 2013	8,198	1,997	24.4%
	July 1, 2013	7,609	1,626	21.4%
	Apr 1, 2013	10,853	4,392	40.5%
	Dec 31, 2012	13,833	6,001	43.4%
	Oct. 1, 2012	13,472	5,454	40.5%
	July 2, 2012	13,538	5,477	40.5%
Award adjustments (dependency) *	Dec 2, 2013	227,158	161,043	69.3%
	Sep 30, 2013	212,434	152,005	71.6%
	Jul 1, 2013	199,366	145,880	73.2%
	April 2013	186,175	137,054	73.6%
	Dec 31, 2012	169,865	117,142	69.0%
	Oct. 1, 2012	155,682	92,852	59.6%
	July 2, 2012	127,337	69,735	54.8%
Pension – initial entitlement (survivor)	Dec 2, 2013	29,862	18,777	62.9%
	Sep 30, 2013	35,203	22,748	64.6%
	July 1, 2013	47,047	28,705	61.0%
	Apr 1, 2013	48,511	32,082	66.1%
	Dec 31, 2012	49,658	31,616	63.7%
	Oct. 1, 2012	46,883	27,519	58.7%
	July 2, 2012	46,724	25,869	55.4%
Burial benefits	Dec 2, 2013	45,312	N/A	N/A
	Sep 30, 2013	45,671	N/A	N/A
	July 1, 2013	51,078	N/A	N/A
	April 2013	62,094	N/A	N/A
	Dec 31, 2012	63,979	N/A	N/A
	Oct. 1, 2012	63,126	N/A	N/A
	July 2, 2012	66,754	N/A	N/A
Accrued benefits **	Dec 2, 2013	15,750	N/A	N/A
	Sep 30, 2013	15,366	N/A	N/A
	July 1, 2013	14,543	N/A	N/A
	Apr 1, 2013	14,228	N/A	N/A
	Dec 31, 2012	13,098	N/A	N/A
	Oct. 1, 2012	11,906	N/A	N/A
	July 2, 2012	10,807	N/A	N/A
Appeals (includes veterans and survivors)	Dec 2, 2013	266,407	N/A	N/A
	Sep 30, 2013	258,077	N/A	N/A
	July 1, 2013	250,973	N/A	N/A
	Apr 1, 2013	248,422	N/A	N/A
	Dec 31, 2012	252,779	N/A	N/A
	Oct. 1, 2012	254,409	N/A	N/A
	July 2, 2012	255,803	N/A	N/A

* Award adjustments: Involves the modification of benefits based upon additional ancillary factors. Such activity usually occurs when a Veteran or survivor is currently entitled and receiving benefits, such as adjudication of dependency issues.

* Award adjustments: Involves the modification of benefits based upon additional ancillary factors. Such activity usually occurs when a Veteran or survivor is currently entitled and receiving benefits, such as adjudication of dependency issues.

** Accrued benefits: Benefits not paid prior to the death of a Veteran or survivor based upon a pending claim at the time of death which is later granted.

Progress has clearly been made by the VA in 2013 to reduce the number of survivors waiting over 125 days for benefits who are filing initial claims, pension claims, or burial benefits. These categories show some improvements, with volume lowering.

Even with these improvements, thousands continue to wait over 125 days (more than four months) for benefits to be processed. The number of survivors waiting for award adjustments (dependency), accrued benefits and appeals continues to climb.

TAPS is seeing an increasing number of survivors seeking assistance with complex VA claims for survivor benefits. In these situations, military service connection to the cause of death is not established prior to the death, often because the veteran had not applied for VA disability compensation for him or herself prior to the death, and because the death was not an active duty death.

In these situations where service connection to the death, and therefore eligibility for survivor benefits, is denied by the VA, the grieving survivor must prepare evidence and appeal to the VA in order to qualify for survivor benefits. Often these cases involve a veteran who died by suicide. Their traumatized families must compile significant dossiers including military service records, health records, and statements from colleagues and friends of the veteran. Often these appeals can take years, while the surviving spouse, children and parents suffer without the benefits to which they are entitled to under law.

In one case, a widow of a Navy veteran who died by suicide at age 29 in 2011, has spent the last two years attempting to prove service connection to her husband's death and been denied twice by the VA. At the time of the death, their dependent children were ages 5 and 7. Her husband was under VA care at the time of his death, attempted suicide while under VA care, and he did not file a claim for VA disability compensation while alive because he felt there were others who were more deserving of support. There are medical treatment records on file for him but he did not apply for service connected disability compensation prior to his death. She states that one of his VA caseworkers said to her that if he wanted to die by suicide, there was nothing that she could do to stop it. She believes her husband's problems may have been linked to problems he experienced coming out of anesthesia for a hernia surgery at the VA. After the surgery, his wife states that his mental health declined and he talked about trauma he had been exposed to while in the military. She interred her husband in a national cemetery managed by the VA in Bushnell, Florida. She states that a month after his funeral, she received a letter from the VA saying his military personnel and service records were lost, so she had to scan his entire service jacket and send it to the VA in order to apply for survivor benefits. Her applications for benefits have been denied twice. The widow and their two young surviving children would benefit

greatly from the benefits that military service connection to the death would permit. She is currently making a decision on whether to appeal the VA's decision and attempt again to prove service connection to the death. Her case illustrates many of the challenges survivors with complex VA claims face.

We thank the subcommittee for accepting our statement.

DISCLOSURE STATEMENT

The Tragedy Assistance Program for Survivors (TAPS) has not received any Federal grant or contract, relevant to the subject matter of this statement, during the current or previous two fiscal years.

MS. SULIN SCHAFER

Adjudicating VA's Most Complex Disability Claims: Ensuring Quality, Accuracy and Consistency on Complicated Issues

My name is Sulin Schafer. My husband, Errick Schafer is a veteran of the United States Air Force. He served for about 10 years as a fire fighter and had been on multiple deployments. We have been married for almost twelve years, and have two young sons. Errick is also young (in his thirties). He was a top performing military service member, and also participated in any sport with a ball. He coached my oldest son's sport teams; bass fished, went to the gym, and ate healthy everyday. He was full of energy and had a very contagious laugh. He did everything right to maintain his health.

These days, my husband spends most of his days either sitting on our living room couch or laying in bed. He depends on me to get him in and out of bed, get dressed, eat, bathe, and use the bathroom. My once energetic husband who was full of laughter and life is now confined to a body that he cannot control. If that wasn't enough, he no longer has that contagious laugh and can't hold our newborn son. What's the cause of all this misery? In November 2012, Errick was diagnosed with Amyotrophic Lateral Sclerosis (ALS/Lou Gehrig Disease). The doctor said it was military service connected. Apparently, there are military service members who have been deployed to the Middle East, like my husband, and have been diagnosed with this death sentence.

The doctor suggested we go through the Veteran's Administration to file a claim for the disability. When Errick first filed the claim, in November 2012, he was still able to walk. The VA granted Errick a decision of 100% for ALS. By this November, I must transport Errick in a manual wheelchair to get around the house. He cannot use his hands or legs. He cannot speak clearly, so he is silent for the majority of the time he is awake. We rarely leave the house because of the difficulty it takes to get in and out of the vehicle. For a couple of months, because I was pregnant, my husband had friends from the fire department coming over to help. In October, I gave birth to our son, and now have to go back to work in the beginning of December.

Errick had applied for the SMC for Aide and Attendance, and was granted the upgrade. When we discussed the upgrade with a friend, he advised us that the amount did not sound right for the

condition my husband is in. He suggested we speak with his father in law who had retired from the VA as a "rater". Our friend's father in law looked over the decision letter and confirmed that my husband was entitled to a higher rating because he has no use of his upper or lower extremities. He assisted us in filing a Notice of Disagreement and told me to submit it to the VA Representative near Eglin Air Force Base.

Early November, I went to the VA near Eglin AFB to attempt to submit the NOD to the representative. She told me she would look over it for me. After a short overview of the NOD, she told me that it was wrong, and that my husband has the highest rating for SMC. Being that I am not an expert on filing claims with the VA, I believed her to be correct. She said she would fix the NOD and call me within a couple days when she was done with it. I spoke to our friend's father in law, and he said he would escort me to the VA office the next time I went. Well, a couple days passed, and then a week, but I did not hear from the representative. I decided to just go in, and I brought our friend's father in law.

He explained to her the difference between pension and compensation, and that my husband, based on his current condition, is entitled to a much higher rating than what he is receiving. It appeared that she did not know what our friend was explaining, even after he showed her in text a list of ratings directly from the VA website. Needless to say, we left there with nothing accomplished and the disappointment of still being told by a VA representative that my husband was still not entitled to anything else.

It saddened me to think of the many other veterans who have turned to her for guidance and help in filing their claims, and possibly were turned away from what they are entitled to. This encounter has delayed the process of filing my husband's NOD. Right now we really need it to hire someone to care for my husband for the hours that I am at work. With a diagnosis like ALS, when time is not on our side, this is an issue that needed to be handled more delicately and expeditiously. I have sent the NOD with the original disagreement. I have lost confidence in the knowledge that the VA representatives should have.

VETERANS AND MILITARY FAMILIES FOR PROGRESS

December 2, 2013

Congressman Jon Runyan

Chairman, Disabilities Assistance and Memorial Affairs Sub-Committee

334 Cannon House Office Building

Washington, DC. 20003

RE: Adjudicating VA's Most Complex Disability Claims: Ensuring Quality, Accuracy and Consistency on Complicated Issues

Mr. Chairman,

Veterans and Military Families for Progress (VMFP) wants to thank you for holding this hearing on such a timely issue with regard to the Department of Veterans Affairs (VA) process of adjudication of veterans claims for disability, education and other such purposes for the benefits they have rightfully earned.

As you are well aware, the implementation of the Veterans Benefits and Management System (VBMS) has recently taken place within the VA system of claims centers and Regional Offices (RO's). This system has yet to be properly evaluated by the legal community or by Veteran Service Organizations (VSO) responsible for representing veterans in their claims.

It is our belief the VA's attempt at this implementation is not in the best interest of the veteran. This is an electronic set of systems with many hidden features. It is not open to general interpretation or scrutiny. This adds a layer of complexity and confusion with little known results, oversight or regulatory conformance.

In reviewing the overall process, the legal obstacles, in and of themselves, are a burden to most veterans and the lack of assistance from the VA initially is daunting. With this new level of unknown electronic operations, guaranteed only by VA, to process an initial claim is not sufficient to warrantee any level of fulfillment that claims are being processed accurately or consistently. In fact, due to recent reports on claims processing, the opposite is more likely true.

Benefits claim appeals to the Court of Appeals for Veterans Claims (CAVC) have increased at a rate of nearly 1,000 claims per week. The current claims in the CAVC are at their highest point ever.

In reviewing what is supposed to be the process for a veteran or their dependant to apply for a claim, the initial application should consist of the request(s) for a specific benefit (disability, education, medical needs, etc.) accompanied with the veteran's Department of Defense form DD–214, and any supporting documentation. The increased level in obstacles to obtaining the contractually obligated benefits has become steeped in laws and unnecessary bureaucracy to the detriment of veterans and their families.

In reviewing the level of consistency in the decisions from VA on claims from veterans, the comparable evidence is truly a mystery. Claims approvals and denials vary from state to state, region to region and office to office. In many case a veteran with a valid claim in a specific office will have his or her claim denied while a veteran with the exact same claim with the exact same evidence will submit the claim to the same office and have their claim approved.

There is also no supporting evidence, since the implementation of the VBMS system, the claims process or accuracy has either changed or improved. Claims in this system can be determined to be accurate and acceptable to VA, only to have the claim denied by either a Regional Office (RO) or a Director of the RO. This can happen in any office anywhere within all of the offices of the VA making these determinations. Since the VBMS system can be interfered with or altered by an individual, the use of this technology is ineffective by most measurable standards of fairness or justice.

In conclusion, the VA is not making any visible or measurable strides to create a "less complicated" system or improving their methods to help veterans. There is no measurable evidence the recent changes in VA have done anything more than add layers to the existing many layers of bureaucratic schemes designed to insure injustice to veterans seeking the benefits assigned to them in their agreement when they entered military service. The assertion

by the VA for the added by a technology, originally reported to "make things easier" for the veterans and government, has no basis in fact. The issue of complexity of claims resolution is increased to a new level wherein there is no possible method of discovering the processes used to reach a decision on how VA arrived at their assessment of a claim or what was the application of law used in making their determination for a claim.

VMFP respectfully requests your committee examine the disability claims process and the quality of the VA decision more closely in the future. Since there is no evidence to substantiate that claims quality, process, accuracy or complexity has improved in recent months or years, the question(s) you have asked in this hearing are of great importance to our veterans and their families everywhere.

Respectfully,
Ronald D. Scott
Ronald D. Scott
President, Veterans and Military Families for Progress
CC: Committee List

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