# METRICS, MEASUREMENTS AND MISMANAGEMENT IN THE BOARD OF VETERANS' APPEALS

## HEARING

BEFORE THE

## SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATION

OF THE

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

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# METRICS, MEASUREMENTS AND MISMANAGEMENT IN THE BOARD OF VETERANS' APPEALS

**Wednesday, September 10, 2014**

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON VETERANS' AFFAIRS,
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS,
*Washington, D.C.*

The subcommittee met, pursuant to notice, at 1:01 p.m., in Room 340, Cannon House Office Building, Hon. Mike Coffman [chairman of the subcommittee] presiding.

Present: Representatives Coffman, Lamborn, Roe, Huelskamp, Walorski, Kirkpatrick, Takano, O'Rourke, and Walz.

## OPENING STATEMENT OF MIKE COFFMAN, CHAIRMAN

Mr. COFFMAN. Good morning. This hearing will come to order. I want to welcome everyone to today's hearing entitled, "Metrics, Measurements and Mismanagement at the BVA." Today we will hear from both the VA and a witness from within VA's Board of Veterans' Appeals who has seen firsthand the tactics and strategies used by management to hide veterans' claims, rework time frames to cover up the length of time cases have been sitting within the BVA, and manipulate cases to achieve a goal of 55,170 claims adjudicated in a year. We will also hear from representatives from two veterans service organizations in regards to their experiences in representing veterans before the BVA.

We have already seen evidence of data manipulation within the Veterans Health Administration, the Veterans Benefits Administration, and the Health Eligibility Center, and the lengths VA will go in order to cover it up. We must now add the Board of Veterans' Appeals to the list. An extensive House Veterans' Affairs Committee investigation, brought on largely through the bravery and honor displayed by VA whistleblowers, has uncovered numerous processes the BVA uses to manipulate data. For example the BVA has number one counted the same cases multiple times to pad its numbers and make it look like they are achieving high goals for processing veterans' claims. All the while older, more complex cases and the veterans involved in those cases are languishing in the name of the Board of Veterans' Appeals' goals. Number two, changed its reporting system on more than one occasion to hide how long upper management has been holding onto cases without adjudicating them. Number three, the BVA has inappropriately labeled, as in "abeyance," so that the clock stops and the excessive

delays cannot be charged against them. Number four, it has implemented a "rocket docket" system to pull easy cases out of the docket order and adjudicate those cases to pad its numbers, even though the process violates the law and harms those veterans who have more complex cases and have already been waiting a long period of time for a decision. Number five, the BVA has arbitrarily increased yearly case production for administrative law judges which resulted in these judges simply signing cases without reviewing them and not taking advantage of available tools that would shorten the time for adjudicating veterans' claims. Number six, the Board of Veterans' Appeals has transferred cases from storage to the attorneys and administrative law judges even though they are already overloaded with cases, thereby hiding the amount of time a case has been sitting idle in case storage. And finally, number seven, cases are being processed and closed, then the original decision is vacated and that is counted as a completed case a second time. Then when it is returned to BVA for completion it is counted as a closed case for a third time. Out of the 55,170 cases shown as completed last year only approximately 15,000 were actually adjudicated. The remainder were remanded, which means that veterans still have not received a decision on their cases respectively.

The whistleblowers testifying today will provide detailed insight into what has been going on within the Board of Veterans' Appeals. For its part the Board needs to respond to these claims and where necessary be held accountable for its actions. With that, I now yield to Ranking Member Kirkpatrick for any opening remarks she may have.

**OPENING STATEMENT OF ANN KIRKPATRICK, RANKING MEMBER**

Mrs. KIRKPATRICK. Thank you, Mr. Chairman, for holding this hearing on this important topic. I also want to thank the witnesses for coming forward today to appear before this subcommittee.

Over the last number of months I have become increasingly concerned that in the months and years ahead we may be facing a new crisis with veterans waiting too long for decisions on their appeals. This is of critical concern to all of us and having a hearing on the Board of Veterans' Appeals is long overdue. I am concerned about the number of complaints and letters from various sources who have made significant allegations that employees may be attempting to game the system; are providing poor leadership; or that the electronic processing system, VBMS, of which taxpayers have invested hundreds of millions of dollars, is not performing adequately at the appeal level. Indeed VBMS may not be ready for prime time.

We must be assured that the data we get is accurate and represents the reality faced by our veterans. As we saw in Phoenix, this is essential not only for our oversight purposes but to ensure that senior VA leadership has an accurate picture in order to provide leadership plans for released appeals in the future and assure the appropriate resources and tools are applied to address the problems as they exist before we face another crisis.

I routinely hear from veterans in my district in Arizona. They tell me they are waiting years to receive a decision on their appeals. This is unacceptable. Our veterans deserve better. This is

what we are all focused on today, how to address the real delay faced by veterans. I think we can all agree that more needs to be done and that there is a real concern that we may be exchanging a backlog crisis for an appeals crisis.

Nationally the average length of time to receive a decision on an appeal in fiscal year 2013 was 960 days, nearly three years. The number of appeals has continued to grow. BVA projects nearly a 20 percent increase in the number of cases received at the Board this year alone. As VA continues to adjudicate claims more quickly we should only anticipate the number of appeals waiting for a decision to increase.

Another factor leading to the additional delays is that almost half the cases sent to the Board are remanded back to the VA for additional evidence, or due to errors on behalf of the VA. A remand adds another year to the process. Four years to make a decision on an appeal is intolerable.

Solutions are needed to ensure that we begin to reduce these delays and to ensure that the delay in appeals is not the next big crisis. I am hopeful that today's hearing will provide us with the opportunity to begin to identify these solutions. One solution may be that more data is needed, not just better data. Congress, VA, veterans, and VSOs should all trust the quality of the data, be satisfied that the data we are getting provides us with the information we need. I wish to thank the American Legion for emphasizing this in its testimony. VA provides an extensive amount of weekly data on VBA claims by comparison. The Board of Veterans' Appeals provides an annual report.

I hope that we can begin the discussion today on how we can provide our veterans with a better understanding of where we should be with regards to reaching timely outcomes on appeals. Simply put, veterans should receive better timelines and information than they currently get, and Congress should be receiving more frequently updates on the performance of BVA. Providing more comprehensive and accurate data will better enable us to provide oversight and work with BVA to find solutions to problems before these problems reach crisis status.

Thank you, Mr. Chairman, and I yield back.

[THE PREPARED STATEMENT OF ANN KIRKPATRICK APPEARS IN THE APPENDIX]

Mr. COFFMAN. Thank you, Ranking Member Kirkpatrick. I ask that all members waive their opening remarks as per the committee's customs. With that, I invite the first panel to the witness table. And on this panel we will hear from Ms. Kelli Kordich, Senior Counsel, Board of Veterans' Appeals; and Mr. Zachary Hearn, Deputy Director for Claims, The American Legion; Joe Violante, National Legislative Director, Disabled American Veterans. I ask the witnesses to please stand and raise your right hand.

[Witnesses sworn.]

Mr. COFFMAN. Very well. Please be seated. Your complete written statements will be made part of the hearing record. Ms. Kordich, you are now recognized for five minutes.

**STATEMENT OF MS. KELLI KORDICH**

Ms. KORDICH. I would like to thank you, Chairman Coffman and members of Congress, for allowing me to speak today. My name is Kelli Kordich and I am a senior counsel at the Board of Veterans' Appeals in Washington, D.C. I am also an Army veteran having served in the United States Army Transportation Corps for four years, attaining the rank of captain. I started working at the Board in December, 1999. I am here today because as a veteran I am appalled and saddened by unchecked mismanagement, corruption, and blatant disregard for our nation's veterans that has become characteristic of Board management in the pursuit of processing appeals at breakneck speed for management's own self-preservation rather than for the good of the veterans. I am also here as the voice for the many Board employees mired in a toxic management system that uses a culture of fear and intimidation to attain its goals. A few years ago I myself exposed a bullying and morally bankrupt manager and as a result have endured retaliation and intimidation by Board management. The Board's management is ruthless in stifling criticism, going so far as to weaponize the department-wide I CARE principles to label critics as anti-veteran. All of the information I give you today has been backed up with evidence based on exhaustive research by myself and other dedicated employees at the Board who are desperate for the corruption and mismanagement to end but who justifiably were too afraid of retaliation by Board management to offer testimony today.

Reports show that at least since 2012, and as recently as August 2014, Board management held cases in their possession for well in excess of 100 days to over a year. Most of the appeals languishing the longest were either simply awaiting review for signature, or just waiting to be assigned to an attorney. There was no legitimate business reason to allow the cases to languish for months. Disturbingly many of these long neglected appeals were ultimately remands or grants. Rather than addressing the issue of delays, the front office manipulated the Board's electronic record keeping system called VACOLS by electronically shifting around the oldest neglected cases to others in the chairman's office, and by removing the front office from the report. The Board also used a program called rocket docket to meet its production numbers at the expense of veterans. Specifically the appeals those veterans with large cases or more than two issues were not included in the screening process. In addition, the Board's management allowed approximately a hundred cases to be decided under this program out of docket order in violation of statute. And to this day Board management allows judges holding hearings to label a case as a rocket docket cases regardless of docket date to get the case quickly without a mechanism to prevent the judge from denying or granting a case out of docket order.

At the beginning of fiscal year 2014 the Board announced a production goal of 55,170 cases. By March 2013, and even with attorneys working significant amounts of unpaid overtime to meet their own high production goals, people realized that the Board was not on track to reach this lofty production goal. In an effort to remedy this the production goals of the judges were dramatically and retroactively increased midyear. When most judges instantly found

themselves below goal they were forced to review cases less thoroughly in order to catch up. At the same time the Board altered how cases were counted in reaching the production goal by no longer counting the use of independent medical opinions or Veterans Health Administration opinions towards the Board's production goal. Although both devices dramatically decrease how long a veteran has to wait for a decision the Board has seen a 47 percent decrease in the average monthly number of IME and VHA opinions requested. What this means is veterans will have to wait a considerably longer time for a decision on their appeal as their cases are remanded rather than sent for an IME or VHA opinion.

BVA is also scrambling to get cases out of case storage that have an older docket number by literally forcing them into the hands of judges in order to transfer responsibility in the event that a veteran dies while the case is at the Board or if case status inquiries are made concerning the excessive length of time cases have waited to be transferred to the Office of Veterans Law Judges. There are cases that have sat unprocessed in case storage for over 400 days.

To meet the production goal of 55,170 the Board in some cases has counted the same underlying appeal three times when reporting its production, thereby manipulating the production numbers reported to VA and Congress. Board management counts a remand of any case towards the Board's production goal, even though a remand is not a final decision and typically returns to the Board, often to be remanded again and thus counted multiple times in the Board's production report. For the current fiscal year, data reveals that no more than approximately 20,000 individual cases have had a final decision made.

I hope I can further illuminate for this committee the increasingly toxic and veteran unfriendly actions that Board management has adopted in pursuit of their own agenda. Thank you, and I am happy to answer any questions you may have.

[THE PREPARED STATEMENT OF KELLI KORDICH APPEARS IN THE APPENDIX]

Mr. COFFMAN. Thank you, Ms. Kordich. Thank you for your service in the United States Army, and thank you for your service to the Department of Veterans Affairs, and for your courage to step forward today. Mr. Hearn, you have five minutes please.

**STATEMENT OF MR. ZACHARY HEARN**

Mr. HEARN. Thank you. Good afternoon, Chairman Coffman, Ranking Member Kirkpatrick, and members of the committee. On behalf of our new National Commander Mike Helm and the 2.4 million members of the American Legion, thank you for allowing us to testify regarding the problems with the appeals process 74.5 percent, that is the percentage of claims holding the American Legion as power of attorney that have either been granted or remanded by BVA this fiscal year through September 1, 2014. Of the 8,366 claims holding American Legion power of attorney that received dispositions during this time period, 2,330 decisions previously provided by a regional office were overturned and a grant of benefits were awarded. Another 3,904 claims were determined to have been inadequately developed and prematurely denied. Unfortunately, for those 3,904 claims remanded, and those claimants seeking benefits,

their quest for VA benefits continues. These claims were remanded for numerous reasons to include, but not limited to, inadequate compensation and pension examinations; inadequate development of claims at the VA regional office; and failure to consider claims as manifesting secondary or being aggravating by previously service-connected conditions. These remands result in claims not receiving a decision and requiring development as required by the Veterans Law Judges at BVA. Sadly, claims are often remanded two, three, or even more times prior to having a claim finally be adjudicated. Quite simply, this is unacceptable.

As has been widely discussed veterans are having to wait for extended periods of times for original decisions. Combine this fact with years of waiting for a claim to be adjudicated by the BVA and it is understandable why veterans become frustrated.

When I first began my employment with the American Legion I worked at BVA and worked with these veterans to receive their benefits. Often they would ask why it takes years to have a claim adjudicated by the Board. You could sense the frustration and the angst in their voice. The only way I could explain the scenario was that there were 56 regional offices and the Appeals Management Center. I would ask them to envision approaching a major city on the interstate, and how the interstate might go from four to six lanes to accommodate the traffic. Then I asked them to imagine over 50 lanes merging into one, and it is rush hour. This allowed them to visualize the pressures that BVA endures.

The American Legion employs approximately a dozen professional staff and additional support staff dedicated to represent claimants seeking their benefits. I have immense respect for the work they do. Daily they report to work knowing that for the veterans they represent it is often the last chance to rectify previous errors. A good friend once told me it is not enough to do well, you must do some good. Members of the committee, these men and women employed by the American Legion at BVA do good each day.

Repeatedly the American Legion has testified regarding the need for VA to improve its accuracy in the adjudication of VA disability claims at the regional office. The impetus for these comments does not lie solely in the willful statistics indicated by BVA remands and grants, and they are not solely dependent upon the results of various Office of the Inspector General reports. They are reflective of the results of the American Legion's regional office action review visits.

The American Legion spends significant time and energy to review the manner in which VA adjudicates claims at regional offices. Routinely during these visits we discover the same errors that would result in grants or remands at BVA. These visits are not rooted in an effort to prove the flaws of VA. Instead they are rooted in the belief that we can identify common errors by VA adjudicators.

Just yesterday I attended a round table hosted by Senators Bob Casey and Dean Heller. During the meeting representatives of the American Federation of Government Employees indicated that newly hired employees are being rushed into production without comprehensive training. Even VA's own employees recognize the

complexity of VA claims and are calling for increased training to ensure that they can meet the needs of our veterans.

Today, we are here to discuss the BVA. However to only focus upon BVA only discusses the symptom. The American Legion wants to treat the disease.

A review of VA's September 8, 2014, Monday morning workload report reveals 280,297 claims have been appealed and are awaiting adjudication. The number of claims have increased by over 21,000 during this fiscal year. You do not need to be a prophet to forecast that with questionable accuracy in the adjudication of claims will result in an increase of appeals. It is evident we must continue to press to ensure that VA improves its accuracy of disability claims for the errors made today have long-lasting, deleterious effects upon our nation's veterans and their families.

Again, on behalf of National Commander Mike Helm and our 2.4 million members, we thank the committee for inviting us here to speak today. And I will be happy to answer any questions offered by the committee. Thank you.

[THE PREPARED STATEMENT OF ZACHARY HEARN APPEARS IN THE APPENDIX]

Mr. COFFMAN. Mr. Hearn, thank you for your service to our country, and for your advocacy and the American Legion on behalf of our veterans. Mr. Violante, you have five minutes.

**STATEMENT OF MR. JOE VIOLANTE**

Mr. VIOLANTE. Chairman Coffman, Ranking Member Kirkpatrick, and members of the subcommittee, on behalf of DAV I am pleased to testify on ways to improve the appeals process. Although VBA has made significant progress in addressing the pending backlog of claims the single most important action that VBA can take regarding the backlog of pending appeals is to complete its transformation and reform the claims process. Quite simply, if the error rate goes down and if confidence in the claims process increases, there is a possibility that the percentage of claimants who become appellants would decline.

Today, there are two main options for appellants: the traditional appeals process intended to be decided at the Board and the local Decision Review Officer, or DRO, post-determination review process. The importance of the DRO review process cannot be overstated, since a DRO has a de novo authority, meaning they review the entire claims file with no deference giving to the rating board decision being contested. A DRO can overturn or uphold a previous decision, request a hearing to gather additional evidence, or perform any administrative function available to VBA. DAV strongly supports the DRO program but we believe that the number of DROs at some regional offices around the country is insufficient. More concerning is the assignment of normal claims processing work to DROs at some regional offices for some or all of their time. It is imperative that VBA ensure that DRO focus solely on appeals work.

For those appeals that go the traditional route to the Board, one of the most critical factors affecting the length of time to properly decide an appeal is availability of sufficient resources, primarily staffing and space. While Congress has provided the Board with

additional appropriations to increase its staffing over the past two years, there are concerns about how the Board will provide adequate work space for its entire newly hired staff. The Board is also exploring ways to increase efficiency, such as the initiative known as the rocket docket, which operated from November 2013 through May 2014. Under the rocket docket program cases that met certain criteria were screened outside the normal docket order to determine if the remand was warranted. If that determination was made the Board ordered the development earlier in the process, thereby allowing quicker outcomes for veterans while maintaining the original docket order for each appeal. Overall, the rocket docket appears to have been a benefit for veterans.

Finally, Mr. Chairman, for the past six months DAV, the American Legion, PVA, VFW, AMVETS, and VVA have been discussing ways to improve the appeals process. After multiple consultations among ourselves and with leaders of the Board and VBA we have built consensus around a proposal we are calling the Fully Developed Appeals, or FDA program. This program is built upon the same general principles as the Fully Developed Claims program. In the FDA program there would be no VBA processing or certification and no hearings either locally or at the Board. The elimination of these steps alone could save two to three years of processing time. The veteran would have the ability to submit additional evidence and an argument to support the appeal when they file their FDA. This program, which we believe must begin as a statutorily authorized pilot program, would be totally voluntary. A veteran would have to opt into it and would retain the right to withdraw their FDA appeal and return to traditional process at any time for any reason.

There are details that will need to be worked out but that can only occur as legislative language is drafted and reviewed by all stakeholders. In developing this proposal we greatly benefitted from the work done by Congressman O'Rourke, a member of the subcommittee, and Congressman Cook, a member of the full committee, and their sponsorship of H.R. 4616 The Express Appeals Act. Although we did not build or base our proposal solely on that legislation, and there are differences that are important to us, the FDA proposal was informed by their work and strengthened by conversations with their staffs as well as with the staffs of both committees.

Mr. Chairman, the information we are hearing today, it is hard to explain how these things happen. But we believe you identified the problem. Now we need to work to fix the solution. And like my colleague from the American Legion, we are looking for solutions to make sure that veterans' cases are decided timely and accurately. Thank you.

[THE PREPARED STATEMENT OF JOE VIOLANTE APPEARS IN THE APPENDIX]

Mr. COFFMAN. Thank you, Mr. Violante. Thank you so much for your service to our country, and your advocacy on behalf of veterans as a member of the Disabled American Veterans.

I am going to begin some questions. Ms. Kordich, I am going to focus on you, on three questions I want to ask. The first one is, are you aware of any ways in which the Board is manipulating data

in its reports as part of its quest to achieve the 55,170 production goal?

Ms. KORDICH. Yes, sir. What is happening is that the Board is counting remands, which are not final decisions, more than once. And we also have cases that we call Bryant cases which are being counted more than once, sometimes three times.

Mr. COFFMAN. Thank you. It makes sense to count a grant or a denial as a case in production numbers. But do you think a remand should count as well since the case has not actually been adjudicated?

Ms. KORDICH. No sir, I do not. A remand, as I said earlier, comes back sometimes numerous times. Sometimes it may not come back in the same fiscal year, but sometimes it does so it is counted maybe twice during the same fiscal year. Also the remand rate right now, if you take the remands out of the cases that have been reported you have approximately 20,000 cases that had final decisions. Now if you count cases that are final decisions, plus some cases have remands that go with them so they are sort of a hybrid type of case. So even counting them you have approximately 33,000 cases that have been dispatched, no where near the 55,000 which is our goal for this fiscal year. So no, I do not believe that a remand should be counted because it is not, and the basic premise is, or the bottom line is, is that it is not a final decision and you keep going back to the well for the same, it is the same number over and over again.

Mr. COFFMAN. Are you aware of any other ways in which the Board is manipulating data in how it reports it progress towards the 55,170 production goal?

Ms. KORDICH. Yes, sir. There are cases that we call Bryant cases. And VA entered into a settlement agreement through the federal court and we gave the appellants an option to vacate their cases and have another hearing. And approximately 400 appellants chose to vacate. So we counted those when we vacated them. Then they had a hearing and then they had another decision issued, and so we counted those. So what we have here, and you have, and I believe that this is also an exhibit that the committee has. So what you have is the case going out, first being counted. Then you had the lawsuit, which we then had to vacate the cases. Then you had the hearing. And then the third on the same decision goes out when you have the final decision. So you had three, that case, those cases were counted three times.

Mr. COFFMAN. And my last question, there seems to be a difference in the panel. Mr. Violante stated I believe that the rocket docket was good for vets, if I understand this testimony correctly. But Ms. Kordich, you are saying that it is not. And I am wondering if you could elaborate on that difference?

Ms. KORDICH. Yes, sir. The rocket docket premise is that under 38 U.S.C. 7107(a), the subsection A, cases must be adjudicated in docket order, except for a few exceptions. And those exceptions one of them is what they use for the rocket docket, is that if a case needs to be developed, if it needs further evidence in order to adjudicate, then we can remand it back. Which is fine if in fact you screen all the cases. However, on December 13, 2013, a member of the Vice Chairman's staff sent out an email indicating that we

were going to start the rocket docket program, and the program essentially gave the parameters for how we would do the program. So the program would have overtime attorneys screening cases. There would be no box cases screened. There would be no cases with more than two issues screened. This leads us to having those veterans who are not accommodating enough to have small cases or less than two issues having their cases languish in case storage even though they have an old docket number. So the procedure of the screening was a problem.

Also, those attorneys who were screening the cases only got 20 minutes to screen each case. So they were allowed three cases an hour in order to screen on overtime. Also, the attorneys who screened the cases were not the ones who actually wrote the remand for the cases. So you have a duplication of work and overtime effort whereas it would have been a lot simpler just to have the same attorney that actually reviewed the case to write the case.

Mr. COFFMAN. Thank you, Ms. Kordich. Ranking Member Ann Kirkpatrick.

Mrs. KIRKPATRICK. Ms. Kordich, I want to follow up on that line of questioning. How many hands then touch a single file in the appeals process?

Ms. KORDICH. Do you mean the rocket docket process, ma'am?

Mrs. KIRKPATRICK. In the rocket docket, yes.

Ms. KORDICH. Okay. Well, what you had was the initial screeners, which was an attorney working overtime. So they looked through of course the cases that were not box cases and were not more than two issues. They would go through it and then they would decide and they would write on the front of it, had a sheet on the front of what they thought could be done for the case. So then, that was then later distributed the following week so that the attorney working overtime to write the case got it.

Mrs. KIRKPATRICK. But to a different person? A different attorney?

Ms. KORDICH. Right, a different person entirely. And sometimes that person who got it did not see eye to eye with the first one who actually screened the case. So sometimes it had to go back down because it was not going to be a grant, or it was not going to be a remand. It would have been a grant or a denial. So——

Mrs. KIRKPATRICK. Just to be clear, so then it goes back to the original attorney?

Ms. KORDICH. Well no, it goes back to case storage.

Mrs. KIRKPATRICK. To case storage? Okay.

Ms. KORDICH. Right. Because the screening was, the screening was not proper so it would go back to be distributed later.

Mrs. KIRKPATRICK. Do you think there is adequate training for the people who are doing this, this type of work?

Ms. KORDICH. I think there was adequate training. I do not think there was an adequate enough time for them to go through each case. And I do not, and my main problem was that box cases or more than two issues cases were just left languishing and we were getting the easy cases out instead, or screening the easy cases instead.

Mrs. KIRKPATRICK. When the box cases are brought out of the box, do they get a new docket number? Or do they continue with the same docket number?

Ms. KORDICH. No, no. What a box case is is so many volumes of one case, so much evidence in one case, the volumes are just placed in a box. It is sort of like a, like reams of paper in a box that you have for the Xerox machine. And that is the type of box it is. Sometimes you have two boxes, or more than two. But usually it is a box and it has volumes in it. A regular case, that we call a regular case, would be one or two volumes I would say probably, six inches high.

Mrs. KIRKPATRICK. And this committee are very concerned about the VA's system and use of technology. Do you think that the technology is adequate?

Ms. KORDICH. In your opening statement you were talking about the VBMS.

Mrs. KIRKPATRICK. Yes.

Ms. KORDICH. And as a GS–15 I have a lot of attorneys coming to me in my group. We have a work group. And they come to me with many complaints about the VBMS system being down, that it freezes up. And sometimes you have hundreds, 500 pieces of mail that you have to go through, or evidence that you have to go through when you get into the virtual system or the VBMS system. And it can take you twice as long to do a VBMS case as it does to do a regular paper case because our attorneys are trained to look at the paper cases and know exactly what it is that they just do not need to look at or that, you know, they can come back to later. But in the VBMS you just have to go through the system and to the computer and it takes you a lot longer, especially with all the glitches that there are. And I get a lot of complaints from attorneys that they would rather not even have those cases.

Mrs. KIRKPATRICK. And I want to thank you for your courage in coming forward. We appreciate that. And we believe that that is essentially in actually being better able to serve our veterans. I recently introduced the Whistleblower Protection Act to protect whistleblowers within the system so that this committee can do its job.

Ms. KORDICH. Thank you.

Mrs. KIRKPATRICK. As I said in my opening statement, we know what the problem is. Mr. Violante, you addressed that. We are looking for solutions. And I want to applaud my colleague Beto O'Rourke and Mr. Cook for bringing forward the Express Appeals Act. I think that is a step in the right direction. It looks to me like the solutions are sort of around four things that we could do right away to avoid this crisis. That is get better data; look at resources, is resourcing adequate, is there enough staff, enough attorneys, enough judges; training, is it adequate; and then, you know, launching the pilot program. So Mr. Violante, I just wonder if you could comment on those four things? Better data, resources, training, the pilot program?

Mr. VIOLANTE. I mean, they are obviously all excellent points. I would put probably data at the bottom of my list. Because, you know, we talk about numbers a lot. But we do not talk about the final results. And to me, that is more important to a veteran. You know, whether the Board produces 40,000 appeal decisions or

60,000 appeal decisions, the question is are they correct, are they timely? So I would like to see that. Certainly training is a big factor. I would also like to address the question from the chairman regarding appeals, or regarding remands. I worked at the Board for five years in the eighties, B.C., before the court. It was a little easier back then. We did not have to worry about decisions from above. Whatever we said was the law. But a remand should be counted because someone is looking through the case and making a determination. You are still doing much of the same up front work. It is certainly a lot easier to write a remand decision than it is to write a regular decision. But again, unless you can figure out another way to count that attorney's time I think remands have to be counted. Accountability, to make sure that these cases are being remanded accurately and could not have been allowed at that level. And that I noticed a number of remands coming back to the Board over and over again. And again, accountability on what the regional offices are doing to correct those decisions and correct their errors need to be factored into this also.

Mrs. KIRKPATRICK. Thank you so much. I yield back.

Mr. COFFMAN. Thank you, Ranking Member Kirkpatrick. Mr. Lamborn.

Mr. LAMBORN. Thank you, Mr. Chairman. Thanks for your hard work and for having this hearing. Ms. Kordich, I would like to ask you about one of the practices you referred to that was of concern in trying to speed up things but creating problems in the process. And that is forcing cases too quickly into the hands of judges. Could you elaborate on that a little bit more, please?

Ms. KORDICH. Yes, sir. When Secretary Shinseki resigned on May 30th, on June 2nd we got an email from case storage that said that they would start sending cases up with 2011, June 2011 and earlier docket numbers automatically. And this was a total change in the way we worked our procedure. What happened was that I believe that management found out that as soon as Secretary Shinseki was gone that there may be some questions as to the cases languishing in case storage that had docket numbers, so they started sending them up. What the problem was is that the judges, what the usual procedure was that they would ask us to order cases whenever they needed them so that they could manage their own case load. Well, now they are coming up whether they want them or not. Now that they have a system where if they have too many cases they can say no. But at the beginning they were coming up so quickly, they were giving them out to the attorneys and the attorneys had 13 or 14 cases assigned to them. Well, of course they are going to be old by the time they start working them because they have such a big caseload.

Mr. LAMBORN. So is that something that is no longer an issue today?

Ms. KORDICH. It is still an issue. I have——

Mr. LAMBORN. It is still an issue?

Ms. KORDICH. Yes it is, sir. I have, I have judges now that say I do not want you to order any more cases. Tell them to stop the automatic deliveries for this week and next week.

Mr. LAMBORN. So they are not really ready? They are not really ripe for a decision?

Ms. KORDICH. They are ripe for a decision. But the judge now cannot manage their own caseload so they just keep coming at breakneck speed. And they have to keep giving them out, which bogs down the attorneys. And then it takes them a while to get the cases done. What they usually did was they came up gradually, of course in docket order, and but then when the Secretary resigned then they were afraid that there would be too many old cases in case storage that were languishing because they were cherry-picked like they were for the rocket docket. So you had the box cases, the more than three issue cases coming up because they were old.

Mr. LAMBORN. Okay. And on the rocket docket it sounds like it was well intended, a good idea, but there were unintended consequences. Is that how you would characterize it?

Ms. KORDICH. Well, I would characterize it as we needed to get 55,170 cases out and this was a good way to do it. And we are going to do it quickly because we do not want to be looking at the box cases and the cases that are more than three issues. So we will just cherry-pick. And then that is when there became disarray in the case storage because then you had old cases that were down there, cases that had been cherry-picked that were old, that were coming up but they were newer. Also, I would like to say that not a part of the rocket docket but however cases that were taken out of docket order, say 2013 cases that should not have been taken up, were training cases for attorneys. So when new attorneys start they get simpler cases of course to train. But those cases were coming up unchecked because a lot of them were not, were out of docket order. So many of those cases were coming up for trainees that should not have been coming up.

Mr. LAMBORN. Okay. Thank you for our testimony, and for all of you for being here today. Mr. Chairman, I yield back.

Mr. COFFMAN. Thank you, Mr. Lamborn. Mr. Takano.

Mr. TAKANO. Thank you, Mr. Chairman. Mr. Violante, could you, you expressed in your opening remarks strong support for the rocket docket program. Could you elaborate a little more about why?

Mr. VIOLANTE. Yes. I mean, in our mind it is a triage program. Now how it was implemented raises some questions. But I think the concept of finding those cases that you cannot decide because there is additional development that needs to be done, or something missing from the claims file, finding those early on and sending them back to have that work done definitely is a way to look at these cases and get them done quicker. And when those cases came back with the information these veterans I believe got a faster decision.

Mr. TAKANO. I do not know if this is the same administrative procedure that got put in place. But I remember the health claims, the ratings that were, needed to applied in Los Angeles, some revisions in procedure allowed certain parts of a claim to be decided faster so they would not have to decide the whole claim all at once. I think that was a separate sort of claim, not a BVA claim. But the idea was triage, and we could, I mean, you can negatively maybe characterize it as cherry-picking. But on the other side of it it was looking to, you know, accelerate those claims that were simpler to

adjudicate and get it done faster. I mean, that is what I hear you saying.

Mr. VIOLANTE. Right. I mean, again, the concept I think is triage. How it was implemented may be something different. But, you know, to identify those cases early on and get that development done I think is a definite way to go.

Mr. TAKANO. Ms. Kordich, would you, do you want to see rocket docket eliminated? Or do you think we need to, is there some accommodation? I mean, do you subscribe to the idea that there are some cases that we could move faster? Or does everything have to go in docket order, as you——

Ms. KORDICH. No. I think, no sir, I think the screening process needs to be better. I mean, maybe you can give them 20 minutes, the attorneys working overtime to look at a bigger case or but I do not think veterans should be ignored just because they have bigger cases. I also would like to point out that about a hundred cases were actually granted, which is in violation of 7107(f) because there are no exemptions to grant cases. They are only to be developed. So there a hundred cases that were actually granted out of docket order.

Mr. TAKANO. Is there a way for us to do you think, you know, move the simpler cases, you know, much faster even if they go out of docket order? And concentrate staff time on those more complex cases? I mean——

Ms. KORDICH. I mean, I am sure sir you could come up with a, I think the main concern, the main motive of the management was just to get cases out.

Mr. TAKANO. Just to get cases out?

Ms. KORDICH. Right. I mean, I am sure that someone could sit down and think about, I do not think it is that difficult to figure out, you know, a screening process where we could, I know it is not a perfect system. You cannot do everything in precise docket order. But this was more of languishing cases and then once June 1st came around then there was a scramble to get these cases out just in case.

Mr. TAKANO. In your testimony you highlighted the poor morale at the Board. And do you think, what do you think could be done to make the Board a better employer?

Ms. KORDICH. The Board has had a problem with a culture of fear and intimidation for a long time. Attorneys are afraid to express their views. And it is always met by swift retaliation if they just make a benign comment. When the Vice Chairman initiated the 55,170 there was a poster contest. And then people, to promote the 55,170, and I believe that you have that, some of those posters as evidence. And Board attorneys were angry at management for such a cavalier attitude because they actually do the work. There is no production requirement in the front office for attorneys there. So what happens is it was met by anger and some gag posters. And when the gag posters came out the Vice Chairman sent an email apparently insinuating that the creator of the poster was anti-veteran.

Mr. TAKANO. Oh dear. Do you think that the Board is under-resource? Do you think that the problem is understaffing, or is it just strictly kind of a management style?

Ms. KORDICH. I think it is management. I think we have more than enough staff.

Mr. TAKANO. Okay. Mr. Chairman, I yield back.

Mr. COFFMAN. Thank you. Ms. Walorski?

Mrs. WALORSKI. Thank you, Mr. Chairman. And I just wanted to echo my agreement with the chairman's opening remarks and the ranking member's, that I hope as well that we have not gone from major health crisis in the VA to a major appeals process as well. And I appreciate the testimony as well from our VSO organizations that are always supportive of veterans, and I appreciate you coming forward Ms. Kordich. I cannot imagine, with what this whole committee has been through with the VA for the last several months, and I am new. Some of these guys have been at this for years. But I guess my first question is for you, Ms. Kordich. Have you seen any change in even the attitude and behavior with the departure of the Secretary Shinseki and the new Secretary come on? Has there been kind of a, is there a sigh of relief that maybe there is help coming? Is there just the same old, same old as this continues to roll along?

Ms. KORDICH. I think at first Board attorneys were optimistic.

Mrs. WALORSKI. Yes.

Ms. KORDICH. However, there still seems to be no emphasis on protecting those who want to speak out. It is sort of business as usual.

Mrs. WALORSKI. So whistleblowers do not feel like they have additional protection today that they may not have had a couple of months ago?

Ms. KORDICH. Oh, no. No, not at all. Not at all. It is the same continuous. Like I mentioned earlier, Board management uses the I CARE standards or values as a weapon against employees.

Mrs. WALORSKI. Yes.

Ms. KORDICH. And, although they do not follow them themselves.

Mrs. WALORSKI. I am almost afraid to ask this question. But are there any performance bonuses attached to anything in the front office about any of these numbers and cases and rocket docket, and who gets this and who gets that? Are there performance bonuses attached to how many cases are filed, adjudicated, anything like that? Are there performance bonuses in the structure?

Ms. KORDICH. Yes, there are. And in December there are performance bonuses. I mentioned in my testimony that in May of 2012 there were cases held an appalling amount of time by Board management and then they started switching them around so that they would not get caught. Those individuals all received the bonuses. Some of the cases were held for a processing time of 606 days.

Mrs. WALORSKI. Oh, my goodness.

Ms. KORDICH. When it was only, when it was a grant so that the veteran could have gotten their benefits earlier. But there was a, and those employees received bonuses and they were all promoted. The Principal Deputy Vice Chairman to Vice Chairman, and the rest to judges. And I will add coincidentally none of them are veterans.

Mrs. WALORSKI. Interesting. From your perspective the VA Reform Law that we just passed, that the President signed, that in

some cases a lot of it does not roll out until October. Do you see any hope, and I know you are in the appeal position. We just spent a lot of time dealing with the healthcare position. But the over, the duplication is there because of how these cases are processed. Do you see anything up until this point that we have done as a committee that has done anything to impact the world of appeals or anything else? Or do you see that we, that the only hope is urgent legislation out of here that will start combating the appeals process?

Ms. KORDICH. I think the latter.

Mrs. WALORSKI. Urgent——

Ms. KORDICH. Yes, ma'am.

Mrs. WALORSKI. Do you think the general attitude in the VA, with as much attention at this conference, and the nation, the American people are at the table. You know, from New York to California, the American people want our veterans to have every single thing they deserve, as do we. Do you think that the pressure from the American people helped turn the attitudes inside of just the general VA as you know it? Not so much that, you know, Congress did X, but just the American people, their ears are on. They care and they are fighting for veterans. Do you see that as being, having helped in the healthcare arena, and something that we could carry over into the appeals arena?

Ms. KORDICH. I think so. I think people were not, with us we are such a small——

Mrs. WALORSKI. Yes.

Ms. KORDICH [continuing]. Area that, and that is why this has been able to go on because nobody really paid attention to what was going on.

Mrs. WALORSKI. Yes. Okay.

Ms. KORDICH. Until this hearing. And then I think management was quite shocked. However, I do think that people are now, the American public are now focused on, well, what is going on with other departments?

Mrs. WALORSKI. Yes.

Ms. KORDICH. And I think it is good that this committee has looked into the VHA and the VBA as well.

Mrs. WALORSKI. I appreciate it. Thank you so much for your testimony, all of you. And I yield back the balance of my time, Mr. Chairman.

Mr. COFFMAN. Thank you. Mr. O'Rourke.

Mr. O'ROURKE. . Thank you, Mr. Chair. Thank you for raising the profile of this issue, you along with the ranking member, ensuring that this does not go unnoticed. And I want to thank our panelists for helping to shed some additional light on this and for all the work that you are doing, including just informing us that we can make better policy decisions and hold the VA accountable for its actions.

You know, just anecdotally, you know, we had been so focused when it came to VBA issues on first time service-connection disability claims and the long wait times we were seeing out of Waco, which serves El Paso, up to 470 days last year for an average wait time out of El Paso, that I do not think we realized the crisis that was developing in the appeals process. And I was at a town hall

earlier this year and a veteran stood up and he said, hey, great work on this first time disability claim issue. But I have had an appeal that has not been touched for two years. You mentioned 400 days earlier. You know, two years. And what are you all going to do about it? We had Mr. Jason Ware, who is second in command at Waco there visiting El Paso. And I thought it was telling that he could give us no information on the appeals backlog, where we stood, the average wait time. You know, I will get back to you. We just had a meeting with him this Saturday at a town hall and he was able to give us more of an update. But even within the VA I do not think that there was acknowledgment that they had a problem. So really appreciate it.

Several have mentioned, including Mr. Violante, the bill that we worked on with Mr. Cook, that you all worked on with us. And I want to thank you for that, the Express Appeals Act. Especially the veteran sacrifices his or her ability to add additional information to the appeal and in return there is an expedited process to adjudicate that appeal. A kind of a trade off like you have with the fully developed claim for first time claimants. And certainly, I know I speak for Mr. Cook, we stand ready to make improvements to this bill. And we also have no pride of ownership. If there is a better way to get this introduced and heard and on the floor of the House, we stand ready. I know I had a chance to talk to Mr. Augustine yesterday and he was very kind to call me again today to provide an update and suggested that it might make sense to get together with the leadership from all the VSOs to talk about either how we improve this or do something different. I would love to hear from Mr. Hearn and Mr. Violante any suggestions on what we would do differently or better than what already exists in the bill offered by myself and Mr. Cook.

Mr. VIOLANTE. Well the one thing we would like to see is a pilot program because we want to be able to look at it after three years, two, three years, and see is it working properly? Is it working the way we had anticipated? Again, our, you know, design is that a veteran have the ultimate right. In other words, if you choose to go this route you are choosing to go this route because you do not have any additional evidence, you want to get a quick decision. But at some point in time if you realize that there is additional evidence out there we want that veteran to have the ability to pull out of that fully developed appeals process and go back to the normal, traditional process. So those are just a couple of the things that we are looking at. I am trying to remember——

Mr. O'ROURKE. Well let us continue to talk. Because our bill, as I understand it, is a pilot program and provides for this express appeals option as a pilot, to make sure that we test the concept. But if there is a better way to do it, again, I stand open. Mr. Hearn, I do not know if you have any suggestions on how we improve this?

Mr. HEARN. The American Legion is obviously very interested in trying to find the most expeditious way of getting these appeals handled. The number of days that it goes in the process, and has been alluded to today with the remands it is obviously a major issue that is just continuing to expand. I spoke with Verna. She is doing a Veterans Crisis Command Center, and I know you are quite familiar with that. And so she, what she wanted to express,

I was speaking to her this morning, she said that she would love to be able to sit down and talk with you all next week and try to hash out some things. And she has her own ideas as well. But she definitely wanted me to convey that to you this afternoon.

Mr. O'ROURKE. Thank you. And again, appreciate what all of you are doing. As I yield back I would be remiss if I did not acknowledge the fact that we are once again at War in Iraq. You know, it may not be formally declared but we have servicemembers flying missions over there, we have boots on the ground in that country. I believe we are going to formalize that War to include Syria from the President's announcement tonight. And it is possible that the Congress will be asked to vote on an authorization for use of military force. I just hope that for my colleagues that weighs in the balance as we make decisions about sending servicemembers into combat roles again, given what we are hearing today and our inability to solve some very basic problems with how we treat veterans when they return from the battlefield. So again, appreciate your service and what you do out of uniform for veterans everyday. And I yield back to the chair.

Mr. COFFMAN. Thank you, Mr. O'Rourke. Mr. Huelskamp.

Dr. HUELSKAMP. Thank you, Mr. Chairman. Thank you for calling this hearing and giving us an opportunity to learn some more about this situation. Ms. Kordich, I hope I pronounced that correctly, if I might have a few questions of you. And I am trying to read through your testimony. A lot of information there, and you are trying to get to the bottom of that. Just up front, I want to know since it was known that you were going to appear here or became outspoken about your concerns about what you saw occurring in the workplace, can you identify any intimidation or retribution against you personally from management or other employees?

Ms. KORDICH. Not yet from this hearing. I do expect it because Board management, they cannot manage very well but they can retaliate against employees very well. And I had filed an EEO complaint and I have been retaliated against for that. So——

Dr. HUELSKAMP. Okay.

Ms. KORDICH [continuing]. It is a continuing thing, yes.

Dr. HUELSKAMP. Okay. Who set the production goal at 55,170?

Ms. KORDICH. Who set that, sir?

Dr. HUELSKAMP. Yes.

Ms. KORDICH. I think the Vice Chairman met with Secretary Shinseki and they came up with that number.

Dr. HUELSKAMP. Yes, I will ask them how they figured out that very exact figure. Do you know how many outstanding appeals are awaiting, our veterans are waiting for action by the Board?

Ms. KORDICH. I do not, sir.

Dr. HUELSKAMP. Okay. Okay. A couple of very specific things in there. You did note that there are a number of veterans that the decisions essentially, if I read correctly, were made and were simply awaiting signature of a judge or an acting judge. Could you describe that a little more? It sounds——

Ms. KORDICH. Yes, sir. Back, that was in May of 2012. Management, and if you are, for example I am a GS–15. I can do acting work. So I can sign cases. And then I also write cases for judges as well, or acting judges as well. And when I was in the front office

I wrote some cases for the Chief Counsel for Operations, Mr. Hachey. And what we can do is we can access what is called an old cases, we call it an old cases, it is in our system, it is called VACOLS. And it shows when a case has been held 30 days or more. And so I was wanting to know if my case was being signed by Mr. Hachey so I was looking in there. And once you look into the system you can also take the number from the system and look to see where the case has been. For example, like a tracker. So there was one particular case I was looking at and it was a case that I believe that you have, the committee has, the veteran's name that begins with a C. And I was given the case by Mr. Hachey to write on April 6, 2012, or 2011, I am sorry. And I checked it into myself. I wrote and submitted the case for Mr. Hachey's signature on April 15, 2011. On September 15, 2011, Mr. Hachey charged the case back to me while I was traveling on Board business. When I returned, I completed the corrections and resubmitted the case back to him on September 20, 2011. On June 8, 2012, 262 days later, he signed the case, which was a simple remand for a VA examination.

Dr. HUELSKAMP. Yes, okay. Wow, I guess I will have follow-up questions with the others as well. You do also mention a couple of other issues. Page 10 of your testimony you talk about minutes of a meeting on June, or you talk about a June 4th meeting with Ms. Eskenazi. And do you, were you at that meeting?

Ms. KORDICH. The June 4th?

Dr. HUELSKAMP. Of 2014?

Ms. KORDICH. Yes, sir.

Dr. HUELSKAMP. Okay. Do you know if there are minutes of that meeting, or, and——

Ms. KORDICH. I am not sure.

Dr. HUELSKAMP. Okay.

Ms. KORDICH. I am not sure if minutes were taken of that meeting. Was that the June 4th meeting of the, concerning the——

Dr. HUELSKAMP. It concerned about Congress.

Ms. KORDICH. That was a couple of meetings, actually, but that was the first time she brought it up. I was not in that meeting, sir. I was in a second after that.

Dr. HUELSKAMP. Okay. Okay. And then the last question in particular that you do note in your testimony that one employee notified the VA Inspector General of the problems but was never contacted by the IG. Can you describe that a little bit more, what you know about that situation?

Ms. KORDICH. Yes. He personally told me that he contacted the IG about the rocket docket program, not so much the program itself but what I have been discussing that the cases were taken out of docket order, the easy ones, and that ones that were not box cases, and he never received a response.

Dr. HUELSKAMP. Do you know how he contacted them? I mean, left a message, sent an email, do you know?

Ms. KORDICH. I am not sure. I think he actually personally went there.

Dr. HUELSKAMP. Yes that is——

Ms. KORDICH. But I will have to get back to you on that.

Dr. HUELSKAMP. Okay. Well the information on that is pretty troubling, especially with some of the recent reports of the IG not being as independent as we presumed they are. They are supposed to be under the statute. So I appreciate your courage, your commitment to our veterans. And we are trying to improve this process so I really appreciate your testimony. I yield back, Mr. Chairman.

Mr. COFFMAN. Mr. Walz.

Mr. WALZ. Thank you, Mr. Chairman. And thank all of you for being here once again. I associate myself with once again Mr. O'Rourke and his wise counsel, that we certainly are going to see the added, I think most of us understand, we hope for the best, pray for the best, but plan for the worst. This idea that surges in cases cause some of these problems however I think is pretty ludicrous. And I would go, Joe, and first ask you. You have been through this a lot. You have seen both sides of it. You are at a unique perspective on this. Is this just deep cultural change? I mean, can we break some of this by attacking that? Or does it need to be fundamental change in way we are doing these?

Mr. VIOLANTE. I think we need accountability. I mean, as you said I can go back, you know, to the late eighties, when Congress was debating whether or not to put a court in place. And I can remember the Chairman of the Board, then Chairman of the Board going across the street to meet with Secretary Dewinski and coming back with different orders each time. Put out more cases, put out more allowances, just put out more cases in general so people know what we are doing. I also observed at that time before I was leaving to go to DAV that they went around and collected cases for signatures by two Board members. And at that time, it was a Board. There were usually three members. In the medical side it was two attorneys and a doctor, and on the legal side three attorneys. So I mean, this has gone on. It is terrible. But if you do not have accountability and if you only focus on the numbers, that is what you are going to get, is this type of behavior.

Mr. WALZ. So I, and I think, I note this because this is, the folks who have been involved with this, you have been talking to me about this for a decade that this was an issue. It came to, and I am very appreciative, Ms. Kordich, that you would come forward. My question to you is what is your, what is your formal process when you noticed that there was problems? What was your formal and informal process to improve the process for our veterans? And how were those received? Like if you saw some of this happening formally where are you supposed to go?

Ms. KORDICH. Well I would talk to my supervisor, who is the Chief Judge. However, they tend not to want to do anything that is not sanctioned by the front office or the Chairman's office. So their hands are tied because they are afraid. I mean, if you try to change something or if you try speak out no one wants to hear it.

Mr. WALZ. Who is the person or who are the people instilling this fear? Who, I want, you know, because I said, and we are not going to do it right here. But as Joe is saying on this, there needs to be a name and a face and an accountability. And if that is what is holding this up, and we are, and I think some of these are great ideas which I am very supportive of. But I think we can put in, you know, fully developed appeal. But if we have got somebody sitting

in that position that is going to be the gatekeeper and is going to hold things, it is still a problem. Who are they? And they just, they sit in these positions?

Ms. KORDICH. Well we have the Vice Chair. But we do not have a Chairman right now. It has been vacant for almost three years now.

Mr. WALZ. Right.

Ms. KORDICH. But we do have a Vice Chairman, Ms. Eskenazi. And her, she was a protégeé of the former Vice Chairman who was about, it was the same, business as usual. So of course she was the protégeé so——

Mr. WALZ. Why do we not have a Chairman?

Ms. KORDICH. I have no idea, sir.

Mr. WALZ. That is a question for us to ask, by the way. So, and answer. And answer. So you do not have that. That is closed off to you. Is doing, is coming in this regard, and again I am incredibly grateful for it but I am just sorry you were ever put in this position. Because I know from a professional and a personal standpoint this is the last thing you want to have to do. You just wish there was a process to fix it.

Ms. KORDICH. Sir, I do.

Mr. WALZ. Is this your only informal route?

Ms. KORDICH. Yes, sir.

Mr. WALZ. Is to come this direction?

Ms. KORDICH. Yes, sir. Because like I said earlier I have filed an EEO complaint which no one wants to hear. I have been retaliated against. I have a little small office. And, with no window. And across——

Mr. WALZ. Is that how it is done? It is just done with pettiness and marginalizes you?

Ms. KORDICH. Yes. Exactly. And across the hall from me there has been two window offices vacant for two years but they would never move me into that.

Mr. WALZ. Well I think this is the thing, and we have heard it before, I mean it is hard to fathom that this kind of stuff happens or the pettiness that goes on. But all of us in this room know the veteran pays for it. You are certainly paying for it, and for that I am deeply sorry. But the veterans are also paying for it and they had nothing to do with it. So I would encourage all of us, I thank the chairman and the ranking member, thank you for the hearing. The followup on this, again, it is one thing to talk about accountability. There is a name and a face and somebody is getting a paycheck that is doing this. Those are the people we need, those are the people I want to sit right here. I yield back.

Mr. COFFMAN. Thank you, Mr. Walz. It is my understanding that there is a Director nominee whose confirmation is pending before the United States Senate. I think it has been a couple of years that that has been the case and it has yet to be acted upon. Dr. Roe?

Dr. ROE. Thank you, Mr. Chairman. And to follow up with Mr. Walz, what we hear when we go home from veterans, they do not know about boxes and all, they do not know what that is. I do not even know what that all is until you explained it to me a minute ago. All they know is I am losing my home, I cannot pay my bills,

my kid is in college, I have no way to take care of my family, and we are talking about boxes and people will not sign anything.

Let me give you a little accountability. We had doctors where I practiced who would not sign their charts. You know, your discharge summaries and your surgical notes. It was pretty simple. If you did not sign them, sign those charts, you could not schedule any more cases for surgery. Well if you cannot schedule any more cases for surgery you cannot make a living if you are a surgeon like I was. So guess what? You did your charts. There should be some accountability somewhere. When I heard 200-and-something days, and all it is waiting on is a signature? That is ridiculous. And I heard you say, and we heard this through numbing hours of testimony this year with the VA, is that it is not a money issue. When I first came on here, Mr. Walz came two years before I did, $100 billion a year we were spending on the VA. Now it is going to be a $160 billion that we are spending. The number of veterans from 2000 until now has gone from 26 million of us down to 21.8 million and going down. We did not increase the number of veterans treated by the VA but by 17 percent. And yet we have had this enormous increase in the budget. So I mean I have to almost laugh when I heard a quick decision by the VA, that is an oxymoron by the way, a quick decision. And veterans do not know about rocket dockets and other, they do not care about that, I do not care about that. I just want a veteran whose claim is waiting on it, and this August break we went on, clearly I heard it over and over again. Dr. Roe, when is my claim going to get, so I am checking into them now. Why has it not been adjudicated? Why have I not heard about it? And you know, we have got, I have got one full-time staff member at home that is working on it and I am about to have to add some more just to take care of this. And this backlog is still there. It has not been stopped. And I guess the question I have if you were the czar, what would you do to fix this? If you could, if you could, if you were the boss what would you do to fix this problem? And I realize that there are claims that do not come fully prepared. That I understand, and where more information comes available. But if you could start tomorrow in fixing this problem, what would the few things be so this committee will know which direction to go?

Ms. KORDICH. I think I would appreciate the attorneys that do the work better and not force them to work unpaid overtime so that they can take vacation. They are the workhorses and they need to be appreciated. The front office does not seem to understand that. And——

Dr. ROE. Are you saying then it is leadership?

Ms. KORDICH. Yes sir. Definitely.

Dr. ROE. Not the worker bees?

Ms. KORDICH. Not the worker bees at all because they have a production goal, they do it. They are not going to let a case sit for 606 days, or 200-and-some. Because they need the credit for that case and so do the judges. So they sign the cases. Up in management there is no production so it is a, they——

Dr. ROE. What would be the reason for a veteran to, I mean here is a veteran, I see them all the time, sitting at home and I have

got to go back and tell them that your chart just sat on somebody's desk for 200 days waiting for a signature. Did I hear that wrong?

Ms. KORDICH. Yes, sir. Or, and sometimes 606 days in processing.

Dr. ROE. So I have got to go home and look at, I just got back from Vietnam not long ago, look at one of my colleagues that served in Vietnam, and walked through the mud, and did that for our country, and they are waiting on somebody to take their—excuse me, I almost said something bad. Their pen and sign a chart? Has that happened?

Ms. KORDICH. To review a case that is probably only a remand or a grant of benefits. And to review it and sign it, which does not take 200 days or 606 days.

Dr. ROE. It is hard to make a politician speechless, but I am speechless with that. I yield back.

Mr. COFFMAN. All right. Thank you, Dr. Roe. Our thanks to Ms. Kordich, Mr. Hearn, and Mr. Violante. You are now excused.

Ms. KORDICH. Thank you.

Mr. COFFMAN. All right. I now invite the second panel to the witness table. Our second panel we will hear from Ms. Eskenazi, Executive in Charge, Board of Veterans' Appeals.

I would ask for the witness to stand and raise your right hand.

[Witness sworn.]

Mr. COFFMAN. Please be seated. Ms. Eskenazi, your complete written statement will be made part of the hearing record and you are now recognized for five minutes.

**TESTIMONY OF MS. LAURA ESKENAZI, EXECUTIVE IN CHARGE AND VICE CHAIRMAN, BOARD OF VETERANS' APPEALS, U.S. DEPARTMENT OF VETERANS AFFAIRS; ACCOMPANIED BY MR. JAMES RIDGEWAY, CHIEF COUNSEL FOR POLICY AND PROCEDURE, BOARD OF VETERANS' APPEALS, U.S. DEPARTMENT OF VETERANS AFFAIRS**

**TESTIMONY OF MS. LAURA ESKENAZI**

Ms. ESKENAZI. Thank you, Chairman. I first would like to thank the prior panel, including Ms. Kordich, for the courage to come forward and share her concerns.

Good afternoon, Chairman Coffman, Ranking Member Kirkpatrick, and subcommittee members. Thank you for inviting me to discuss the Board of Veterans' Appeals' commitment to providing all veterans with the timely quality appeals decisions they deserve while ensuring integrity in the data we utilize to measure our workload.

As Secretary McDonald has stated this is a critical time for VA and we have a great deal of hard work to do to resolve the challenges we face and to rebuild trust. I am here representing the hardworking, dedicated employees of the Board, many of whom are veterans or family members of veterans. We are all committed to overcoming challenges to better serve our nation's veterans.

The Board's mission has remained unchanged since it was established in 1933. That is to conduct hearings and adjudicate appeals in a timely manner. The Board's employees come to work each day with a strong commitment to this mission guided by one principle

in VA's strategic plan. VA is a customer service organization. This principle has been the motivating factor in every decision I have made in my 14 months as Vice Chairman and Executive in Charge. Simply put, veterans always come first.

Having said that I welcome this opportunity to take a hard look at how we do our work and measure performance. We can always do better. I have great respect for the oversight role of this committee. As a steward of public trust I will continue to explore ways to better serve veterans through the highest standards of honesty and integrity. During my 14 months as Executive in Charge the Board underwent tremendous change. We hired and trained nearly 200 new staff growing the Board to approximately 680 employees thanks to the generous funding provided by Congress. This has allowed us to serve the most veterans ever in a fiscal year since the advent of judicial review. I have taken numerous steps to improve organizational climate at the Board by greatly expanding opportunities for employee engagement, communication, and feedback.

The multilayered veterans appeal process is unique across federal and judicial systems with a continuous open record. As a result appeals often involve many cycles of development and readjudication this unique process provides the veteran with many opportunities to have a voice in seeking the benefits that they deserve.

The appeals process is heavily set in law, a body of law that has been built up over 80 years. This law requires that the Board consider and decide appeals in docket order with limited exceptions. Since 1994 docket order is determined by the date that the appeal is formalized at one of VA's regional offices rather than the date the appeal is received at the Board. This creates a docket with a priority order that changes constantly, daily. The docket also contains workflow limitations for cases in which a hearing was held as the law requires that those cases can only be decided by the judge who held the hearing. Additionally, cases that are remanded retain their prior place in line if they return to the Board thereby increasing wait times for newer appeals.

This year the Board piloted a limited program to save wait time for veterans using congressional authority to prescreen cases out of docket order to assess the adequacy of the record. A very small number of appeals were processed through this program which was paused in early June to assess the efficiencies to veterans and to consider feedback from stakeholders. To date, the Board has issued dispositions for waiting veterans in over 51,000 appeals, a dramatic increase over last thanks to the efficiencies put in place at the Board and the generous funding provided by Congress. The Board has also increased its quality rate to 94 percent using a weighted formula that was created in collaboration with the Government Accountability Office in 2002 and 2005.

Although the Board primarily works with paper files the number of electronic appeals in VBMS continues to increase. As Secretary McDonald has stated technology is an enabler and we need to make the most of it. In this spirit the Board has embarked on an aggressive plan for appeals modernization in which we look at people, process, and improved technology to better carry out our mission.

In conclusion veterans are waiting too long for a final decision under current legal framework. We are thankful for the work by Congress and other stakeholders, including the veterans service organization, to explore long term solutions to provide veterans with a timely appeals process they deserve.

I welcome continued input from all stakeholders on how to improve the work of the Board and to reinforce the time honored covenant between America and her veterans. I know that we face challenges but in times of challenge there are opportunities and I continue to reach for the opportunities. Thank you.

[THE PREPARED STATEMENT OF LAURA ESKENAZI APPEARS IN THE APPENDIX]

Mr. COFFMAN. Thank you for your testimony, Ms. Eskenazi. According to documentation from your database dated May 10, 2012 you and attorneys from your office were holding cases for review and signature for as long as 400 days. Can you explain this?

Ms. ESKENAZI. Yes, I am familiar with that report which is dated two and a half years ago. And when I saw that report it gleaned that there was a challenge in work processing in my office and I took immediate corrective measures to rebalance the workload in those offices so that the staff had the right amount of time to do the work that was assigned to them. And I am happy to report that the measures I put in place exist today and we have not been back to that same level of bottleneck.

Mr. COFFMAN. From our review of the database record in almost every one of these egregious cases where there was a notation that a case was in abeyance the amount of time the case was in abeyance was no more than 38 days and in many cases was 21 days or less. How do you reconcile this with your explanation that the cases took so long to process because they were in abeyance?

Ms. ESKENAZI. I am not familiar with the abeyance report that you have. I will note that abeyance is a legitimate place that we have at the Board, a charge, a workload charge, when we have to for example contact the veteran about representation clarification, ask them about a hearing request. And so in those situations we cannot work the appeal. We will put it in abeyance until we receive the response from the veteran. So that is one example of abeyance.

Mr. COFFMAN. Okay. Just if you could drill down again why these cases were held so long before you and your staff held them back for rewrites?

Ms. ESKENAZI. So you are referring to, again, the 2012, May 2012? Yes, that was some time ago. And cases first of all are not just submitted signed. There is a pretty intensive review process by the judge who is authorizing that decision. And what you cannot tell from VACOLS reports is what is under any days. So you have a charge that shows a number of days, but really you have to look at the situation, the facts of the individual case, to see was it something particular to that case? Or was it just a sign of some workload strain in that particular offices? Again, that May, 2012 time frame I took immediate corrective action, and we worked through that as soon as that came to our attention.

Mr. COFFMAN. Yes. Documentation from your office shows that it took you 254 days to process one single case. The document shows

that you received the case to sign in October, 2011 but did not sign the case until June, 2012. Can you explain that?

Ms. ESKENAZI. Yes, I am familiar with that specific case because again I remember this report from two and a half years ago very clearly. That case was unfortunately a case in that it was submitted and it had some errors in the draft decision. And there were some personnel matters kind of connected with that sort of inhibited my ability to swiftly move that case. That case since has had a number of different decisions.

Mr. COFFMAN. Documentation from your office shows that Mr. Hachey, the Chief Counsel for Operations in your office, held a case for a total of 397 days before finally signing it, and it took a total of 606 days to process a case. Can you explain this?

Ms. ESKENAZI. Sure. Again, for those watching we are referring to a report from May 2012, over two and a half years ago. And Mr. Hachey was doing great work assisting me in reorganizing another area of the Board that had some challenges and during that timeframe did not have the time that he needed to carry out all of his duties. And that has since been adjusted. I am very thankful for the funding that Congress has provided over the years that has allowed us to equalize staffing levels where needed to better ensure workflow.

Mr. COFFMAN. Thank you. Ranking Member Kirkpatrick.

Mrs. KIRKPATRICK. Thank you, Mr. Chairman. Ms. Eskenazi, I want to ask you what improvements you have seen since May of 2012, since that report was issued, to now? And then where you see yourself going in the near future?

Ms. ESKENAZI. Certainly. Again, back to that same report for those watching, that report was reflective of a very small part of the Board, an office we call the Appellate Group, which functions like the Board's Office of General Counsel. I was very concerned when I saw those numbers and I put in place much more stringent measures than we had, such as a weekly status report. And the staff to this day submit weekly reports that not only show the case and the days but a description of the status. So that is working very well for that small group of that office.

There has been a number of measures put into place since I became Executive in Charge 14 months ago. One of the first things that I did is pick apart reports that we have and look for what are the oldest cases that we have. We are required by law to decide appeals in docket order and that docket changes daily. And we want to make sure that no cases go sitting unaccounted for a long period of time. So I devised a new report that shows every single case in the custody of the Board from the day it arrives to the day it leaves. And I look at that report regularly, addressing cases with the longest amount of days. And I have been successful in driving that number down.

We also have put in a number of efficiencies in the way that we do our work product. As our VSO colleagues have testified, the appeals process is very, and as I stated, it is very heavily set in law. So there is very little change that we can do in how we provide our work product but yet there is always room for improvement. We looked at our business, drafting appellate decisions, and we trained our staff in ways to become more efficient in their writing so that

they are focused, to the point. And we are also very mindful that we are writing not only to ensure compliance with the law but we are speaking to the veteran, the veteran who has been waiting too long to get their final decision. And so better writing is one effort that we have put into place. And we also, we set our goal, we talked about our goal throughout the year. And that kept people's eye on the mark. And I am very proud that, to say that my staff to this day has issued 52,000 dispositions for waiting veterans, which is more than we had in our inventory last summer.

Mrs. KIRKPATRICK. Do you need more attorneys and more judges?

Ms. ESKENAZI. This is a process, we have a lot of appeals throughout the department. The Board is one part of the process. We are kind of the end part after the appeals process has been worked through the Veterans Benefits Administration. We could always use more resources, and we are very thankful for the resources that we have received in the past two years. But we realize that it is not simply just a people issue. We have to do better in not only our legislative process, and we request support from the committee on proposals that we have sent forward, and we continue to work with our VSO partners, but we also need to look at where we can get a lift out of technology. The department has made great strides with VBMS for the claims part. And now, as I state in my opening statement, is the time to work on appeals. And that is why the Board this year launched a concept known as appeals modernization to study exactly where we need to go with technology.

Mrs. KIRKPATRICK. What is being done right now in terms of the modernization of the appeals process?

Ms. ESKENAZI. Certainly. One of the things that we know we need are different features in the VBMS system that are specific to appeals. Yet we have a long, long wish list so we are working on prioritizing that and synthesizing exactly what we need. So that when we get the funding we are looking for that we are moving forward in a logical fashion. We also, we have heard a lot of discussion today about the Board's tracking database, VACOLS. It is an Oracle database that was built in the 1990's and we track things by using a Power Builder overlay. It is a very antiquated type of technology and we really need a workload tracking database that is integrated with VBMS so we do not have to rely on manual data entries.

Mrs. KIRKPATRICK. Thank you. I think my time is about to run out so I thank you again for appearing before the committee, and I yield back.

Ms. ESKENAZI. Thank you.

Mrs. COFFMAN. Thank you. Mr. Huelskamp.

Dr. HUELSKAMP. Thank you, Mr. Chairman. I appreciate the opportunity to ask some questions. I will follow up on some questions of the prior panel. First of all, who did pick the production goal?

Ms. ESKENAZI. I worked on that goal in conjunction with the Office of the Secretary and the Office of Performance Management. That goal is based on the simple formula of 90 decisions per FTE. We started the year with 613 FTE. Multiplied by 90 that is 55,170 and very reflective of our level of performance in seven fiscal years.

Dr. HUELSKAMP. You started this fiscal year with how many employees?

Ms. ESKENAZI. 613 FTE.

Dr. HUELSKAMP. According to your testimony there was a 30 percent increase in FTE. Over what time period was that?

Ms. ESKENAZI. We started a hiring surge back in May, 2013 and since that timeframe we have increased on average of about 180 to 200 new staff. There has been some attrition in there.

Dr. HUELSKAMP. Wow, that is a lot of new staff. And how many additional cases were worked roughly by this 30 percent increase in FTEs?

Ms. ESKENAZI. And last year our output at the Board was 41,900 appeals. This year we are on target to reach our goal of 55,170. It sounds like a bold number. I am very proud of our staff to have reached that goal. Yet it is very commensurate with our past performance.

Dr. HUELSKAMP. One thing we did hear though, that as far as the measurement, that was shed on the ability to, about those numbers that they are really measuring success when you triple measurement of, is that not the case? That you are measuring some of these cases, double or triple counting those, and that helps achieve that 55,170 goal?

Ms. ESKENAZI. We have measured our outward facing performance the same way since 1991 when requirements were put in place by Congress, published in our annual report. And we measure outcomes from a jurisdictional standpoint commensurate with many appellate bodies across the country.

Dr. HUELSKAMP. Were you triple counting in 1991 as described here?

Ms. ESKENAZI. We count transfer jurisdiction. So appeals are in a process where they may come back to the Board, and they may be the exact same matter or they may be a different matter. And they evolve and we track cases that come in in a particular fiscal year and dispositions the same way since 1991.

Dr. HUELSKAMP. Okay. The question I would have, I am looking at a report from your Board dated September 4th. One particular Judge Trueba has 24 cases that have been awaiting assignment for more than 99 days, awaiting assignment. Can you describe what is occurring and explain that?

Ms. ESKENAZI. Certainly. We have a large number of cases in our possession. We put them in our case storage if they are paper. We have a lot more cases coming in electronically. And we track them in their docket order. They are assigned in docket order. And docket changes daily. As I indicate in my opening statement, there are certain categories of cases that we are very limited in our ability to move around the Board, such as case in which a hearing was held by a particular individual which is probably the case with Judge Trueba. Those cases may only be disposed of by Judge Trueba under the law and may not be reassigned to other individuals.

Dr. HUELSKAMP. Well as I understood, though, this was awaiting assignment, but you believe it is just awaiting the judge, maybe just a signature? Is this the case here?

Ms. ESKENAZI. No, no, no. Those would be waiting for—well again, I am not familiar with exactly what you have in your hand. But cases come to the Board and then they await send-up to a judge depending on their place in the docket and depending upon if they have to go to a specific individual. Then an attorney is assigned the case to draft a tentative decision, and then it goes to the reviewing judge who would review it, ensure that the decision is in compliance with the law——

Dr. HUELSKAMP. Well that is what I am trying to understand. This is a report to maybe look at later. But there are, there is Larkin, Graham, Crawford, Markey, Clementi, Strawman, Kane, they have one, two, or three waiting. And but you have this one particular judge with 24 cases that are 100 days or more. I am trying to understand. They are still waiting on assignment, as I understand that.

Ms. ESKENAZI. Yes and——

Dr. HUELSKAMP. So they are just, what does the judge have to do to assign the case?

Ms. ESKENAZI. Cases are sent from our storage unit in docket order for assignment, and again certain cases can only go to certain individuals under the law. I would be happy to take a look at the report that you have and provide some more explanation. I think that it is indicative of, that is a small universe of, we have a large number of cases——

Dr. HUELSKAMP. Well for the one, two, three, 24 veterans, they do not care about your universe, ma'am.

Ms. ESKENAZI. I understand. I agree with you completely.

Dr. HUELSKAMP. But the docket numbers, if you are assigning that way then you are not taking them out of order? They are not coming as they, they get held up based on the judge?

Ms. ESKENAZI. We get new cases in every day and sometimes——

Dr. HUELSKAMP. How many outstanding cases do you have then?

Ms. ESKENAZI. We have——

Dr. HUELSKAMP. How many veterans?

Ms. ESKENAZI. We have 40,000 cases at the Board, and about 60,000 that are in our jurisdiction, and 20,000 of them are in transit towards us at the Board. And it is a constantly changing number. It does not undervalue the fact that we put out 52,000 cases so far this year and when I stood before my staff last summer we had 47,000 appeals on hand and we have already surpassed what we had at that time. The problem is there is a lot more in the pipeline coming our way.

Dr. HUELSKAMP. So, and Mr. Chairman, I apologize, so if I understand correctly what you are saying here is in one year you are moving through an entire year's backlog coming? There is not an excess beyond a year in terms of the numbers waiting?

Ms. ESKENAZI. And there is a lot more coming, we are aware of that.

Dr. HUELSKAMP. Coming from where in the system?

Ms. ESKENAZI. Appeals start at the Veterans Benefits Administration.

Dr. HUELSKAMP. Sure.

Ms. ESKENAZI. And many are resolved at that level. And ones that are not resolved at those earlier appeals steps do make their way to the Board.

Dr. HUELSKAMP. Then one last clarification, Mr. Chairman. The time period we are talking about, the wait, that starts when it first gets to the, your Board? Or when it started at the prior?

Ms. ESKENAZI. An appeal is, an appeal begins when a veteran disagrees with the decision——

Dr. HUELSKAMP. When does the count start?

Ms. ESKENAZI. It depends on what you are looking at. The appeal starts when the veteran expresses their disagreement with the VBA claims decision. The appeal starts, it goes through many different steps. If they still disagree and they perfect their appeal by filing a substantive appeal, that preserves their place in line for coming to the Board. And that is the point that we use to manage our workload.

Dr. HUELSKAMP. Okay. Thank you, Mr. Chairman. I appreciate that.

Mr. COFFMAN. Thank you, Mr. Huelskamp. Mr. Takano.

Mr. TAKANO. Thank you, Mr. Chairman. Ms. Eskenazi, there have been concerns raised with the screening process known as rocket docket. What are your thoughts on the pilot program? And will VBA be looking to expand the use of this method?

Ms. ESKENAZI. That is a great question. When I first became Executive in Charge 14 months ago and we knew that with the volume coming our way that doing things the same old way was not going to help our veterans. And we thought it was prudent to look at every law available to us and make sure that we were not underlooking, overlooking a provision. There is a provision that Congress enacted in 1994, 38 U.S.C. 7107(f) which permits the Board, an exception to docket order to look at cases out of docket order to screen them. And if the record is inadequate to actually remand it to VBA to get that needed evidence. And if the case comes back in theory the case will be ready for a judge to actually decide it, rather than having waited all this time to then get to a judge only to have to be remanded. This law had never been used in my 19 years at the Board and we decided to pilot to see if we could save any wait time for veterans. We looked at 47,000—I am sorry. 4,700 appeals through the period of November and May. And out of those 4,700 we remanded approximately 1,100 or 1,200 under the rocket docket to get that development completed. And I am happy to report that 60 of those veterans approximately have had benefits granted in full at the appeals management center and those cases are out of the inventory now and the benefits are in the hands of those veterans.

One of the constraints with the program is that we found that it was challenging to screen an appeal effectively and not be simply working the appeal. And so we did look for groups of cases that were, had smaller numbers of issues with the view that that is something that someone could quickly screen and look for an undebatable development. In other words, we are looking to see where we can grant benefits. We would like to grant them where we can for these veterans. But where something is needed we are trying to save wait time. Again, it was a pilot for a limited period

of time. It affected less than three percent of the Board's overall output this year. And I am very appreciative of the comments that have come forward in this hearing and talking with our stakeholders. We did pause the program at the end of May and whether we resume it remains to be seen. Right now we are just analyzing——

Mr. TAKANO. So they were a very small portion, three percent of the entire caseload, and you have paused the program. What are your thoughts on the allegations that this program was used to manipulate outcomes?

Ms. ESKENAZI. I disagree with that statement because this really was an effort to try and save veterans wait time. Our veterans are waiting too long to receive the benefits that they deserve and to receive appeals decisions. And there is a lot of remands in the department today. And we are trying to just be as efficient as possible in saving veterans wait time when evidence is needed. But again, it was a pilot, very limited in scope. And whether we continue it remains to be seen.

Mr. TAKANO. Ms. Kordich detailed what she called shifting of old languishing cases around in the front office to reset the calculation of how many days an appeal may have been in one location. How do you respond to this description, and was it accurate?

Ms. ESKENAZI. I disagree with that description. Again referencing back to a time two and a half years ago under prior Acting Chairman Keller's leadership there was some workload challenges in May 2012 and some appeals were not moving as fast as they should. And it is difficult to tell from that report on its own. Yet no veteran should have to wait and that is why we are working on ways to address processes in which we can help veterans receive the benefits that they deserve in a more timely fashion.

Mr. TAKANO. Well there have been some, what about the organizational climate at the BVA? There have been some harsh criticisms expressed here by employees of the Board. Were you aware, I mean, can you respond to those criticisms?

Ms. ESKENAZI. Absolutely. I was very, you know, I have worked at the Board for quite some time. And there were some organizational climate challenges in past years. And that is why when I became Executive in Charge one of the first things I did is address the issue of organizational climate. And over the course of my 14 months I have put a number of measures in place. Last fall the Board staff participated in a VA all-employee survey and we had a 92 percent participation rate in that survey. And that was increasing it from the prior year when there was only a 12 percent response rate. We were able to get meaningful data at how employees think we are doing our job. And I did not just get the data and put it in a, you know, tuck it away, I immediately met with my management team and I have continued to meet with them over the course of the year to look at how we were graded and see where we can make improvements. I also put together an all-employee survey focus group that has been meeting since April. They presented 13 ideas to management in August and management agreed with every single one of the employee drive suggestions. We look forward to implementing all of those and we have had a number of other focus groups with the judges, an organizational climate

group, we have provided training, I have done countless things to address climate. And I think that we have made improvements but we still have work to do.

Mr. TAKANO. I thank you, Mr. Chairman.

Mr. COFFMAN. Dr. Roe.

Dr. ROE. I thank the chairman. Do you have a picture of the veterans on those cases when they come?

Ms. ESKENAZI. No, we do not.

Dr. ROE. Maybe you should. And what you are dealing with there is a, and let me tell you what I hear at home. What I saw here was, and I am not going to call this person's name out again, but documentation from your office shows that the Chief Counsel of Operations in your office held a case for 397 days before finally signing it. It took a total of 606 days to process the case. And I guess this is after it got to the Board. And you explained, as I understood it when you first started your testimony, that this, he was very busy and did not have time. That is the lamest excuse I have ever heard in my life. And what I hear veterans tell me is that, doc, I think they are just hoping I will die. They will not, I do not hear anything. And after 600 days I can kind of understand why a veteran would feel that way. That is absolutely not an excuse, I did not have time to sign a piece of paper to get this veteran, and I would like to have that person stand in front of that veteran's family, as I have had to do for 30 years, and take responsibility for what I do. When I got out of the operation room I had to go look that family in the eye and talk to them. There is no picture. Nobody were held accountable. There are people waiting at home to pay their light bill for these cases. These are people we are talking about. And you should have to look at that. And somebody who waited two years ought to have to go in front of that veteran and their family and look them in the eye and say it was me that did that. I am the one that created that problem and did not, and I am not going to call this person's name out. They are probably a really nice person. I probably would like them. But my point is is that this has been going on too long. And the veteran starts to count on when their piece of paper is, the day they lick the stamp and send it out the front door, not the day you get it. So it may have been in the pipeline three, four, five years to get adjudicated. And I cannot for the life of me understand why anything would take that long.

Ms. ESKENAZI. I agree that no veteran should have to wait lengthy periods of time to receive their appeals decision.

Dr. ROE. But they are.

Ms. ESKENAZI. And they, they need to receive not only timely appeals decisions but accurate appeals decisions as we have heard in the testimony earlier today. And the Board staff are very committed to doing that work. We have a process that is very densely set in law. And that is why we are really looking forward to continuing to work with the VSOs and the committees to look at ways that we can offer veterans choices and put the decision in the hands of the veteran as to do you want to go this route or do you want to go this route to a quicker decision?

Dr. ROE. My time is running out. But you think, this particular person got $21,000 in bonuses. And they may have deserved them,

I do not know. But it would be hard for me to look at a veteran if it took 600 days and say, oh, this person that worked on your case got a bonus but it took you 600 days when you did not have any money, nothing to pay your bills with. And I have got, the other thing Dr. Huelskamp was talking about this a minute ago. It is a case a person. In other words, there is a difference between cases if they are getting counted two or three times, or when you tell me 50,000, is that 50,000 people? Or is that 50,000 times somebody has touched this case and done something with it?

Ms. ESKENAZI. That is 50,000 veterans.

Dr. ROE. So it is, so when you said last year it is 50,000, 47,000 or whatever the number was, it was a huge number, were adjudicated and cleared, those are people? Not just——

Ms. ESKENAZI. Those are people. There are many more issues on top of that. Each one of those people may come to the table with one, two, three, or more issues.

Dr. ROE. I certainly understand that. But that is a closed case? That is not one where a veteran, like we hear these counts of two or three times where these numbers look better, but that is an actual veteran?

Ms. ESKENAZI. Again, we have tracked our output the same way since 1991. We track dispositions. It is a jurisdictional tracking process. And we track whether the matter is allowed, denied, or remanded. And we really are focused on serving as many veterans as we can in a fiscal year while maintaining high quality in that process.

Dr. ROE. I, look I appreciate that. This is not easy, what you are doing. I certainly, I have been to Detroit and looked at the central records there for several years, and my goodness. I mean, it is mind-boggling how much paper you all have to go through. And I know it is a tremendous amount of work. But there is a person at the end of that sheet of paper. And there is, and I think about these guys and gals that crawled around in the mud, and been shot at, and eaten bad food, and missed Christmas with their families, and missed their children being born serving this country. And many of them had horrific injuries. And many of them did not make it back. You do not have to worry about them, the ones that did not make it back. But it is incumbent on us to serve the ones who did make it back. And I want a commitment here today that I do not want to be sitting here a year from now and hearing that some veteran had 600 days that they had to wait I guess just in the time it got to the Board to get this adjudicated. My time is expired. I am, thanks for the indulgence. I yield back.

Mr. COFFMAN. Thank you, Dr. Roe. Mr. O'Rourke.

Mr. O'ROURKE. Thank you, Mr. Chair. For Ms. Eskenazi, when I get a report on outstanding appeals in the Waco VBA Regional Office are those appeals within your jurisdiction?

Ms. ESKENAZI. No, they are not.

Mr. O'ROURKE. So when I, so they will say we have so many appeals pending, and one of them, they will tell me how many are in NOD status, or notice of disagreement, Form 9, and then a certain number in remand. Those, when we are talking about remanding that is a different number than the one that we are talking about?

Ms. ESKENAZI. Correct. That is under the auspices of the Under Secretary for Benefits.

Mr. O'ROURKE. Great. Okay. When we were discussing earlier with the prior panel the express appeals act, or perhaps some other bill that might address overall wait times and for veterans who have claims under appeal, anything that you want to add to that discussion from your perspective? What we should be talking about or thinking about?

Ms. ESKENAZI. Yes. This process is very unique compared to any system I have ever seen. It is a, on one hand you can argue that this process provides the veterans countless avenues of due process and the department is charged with assisting the veteran in substantiating his or her claim for benefits. There is an open record and we are required at the very last point in the appeals process to accept new evidence. And if that evidence indicates that a medical condition has changed to get an updated examination, which may require sending the case back to have an examination undertaken and to have the case then readjudicated at that first level before it comes back to the Board. That is the one right to review on appeal to the Secretary. This is a process that, as I stated, has been built up over 80 years. And it is in dire need of taking a hard look at the laws that we have in place and looking at what we can agree upon in the process by way of improvement to give veterans faster yet quality decisions. And the VA has been very participatory with, the House hosted a round table back in October, we participated in a round table in March before the Senate, and we have been meeting regularly with our VSO partners.

There are many different ways to approach this. And what we all need to do is keep the focus on why we are here, which is the veteran. And we need to be continuing to keep that in the forefront so faster still is quality.

Mr. O'ROURKE. Another related question. You made a comment earlier, you reminded us that, you know, a lot of this is heavily set in law. That was your phrase. And so since you are in the business of laws what is your, you said there were several recommendations that you had sent to us. Could you highlight the critical one that would make the difference that would free you from some laws that prohibit you from innovating or doing things more quickly?

Ms. ESKENAZI. Certainly. One proposal that we have sent forward over a number of years and has had some discussion is a proposal to allow the Board to schedule video teleconference hearings. Right now we have to wait for veterans to elect a video hearing. And we are still sending some of our 65 judges around the country, sometimes to Manila, to conduct the face to face hearings with our veterans. And certainly that is a wonderful opportunity to have that face to face meeting with our veteran, to shake the hand, to meet the family, and we love that opportunity. At the same time it is resource intensive, it is time intensive to send our judges around the country because we have hearings represent about 25 percent of our workload and we have a lot of other decision work to do. So the video teleconference legislation that we have put forward and it has had some discussion we really would be very happy to see that put into place.

Mr. O'ROURKE. Great. Thank you. I appreciate it.

Mr. COFFMAN. Mr. Walz.

Mr. WALZ. Well, thank you for being here, Ms. Eskenazi. I appreciate that. And I also appreciate at last some of these concrete things that we can do. And this is one we have heard for quite some time that I think makes sense in a modern world and some things that we can get done, try to get it fixed. You listened to the first panel and I get at the heart of this, that we know we have got veterans, we have got a legal process in there, we want fairness, we want to make sure that the claims are correct and all that. But I keep coming back to, because of course there is, we cannot separate, I understand they are totally different agencies, VHA, and things like that. But in the public's mind, what Dr. Roe and others keep coming back to, it is about the veterans, it is not about numbers, it is not about all that. And understand our position on this. When we have whistleblower here, and you disagree with the position where it is at, and then you tell me data bout satisfaction or whatever, data is the one thing in this committee we are very, very skeptical of. Because they were meeting their goals in Phoenix too prior to everything happening. So my question is how beyond what you said of people coming and the satisfaction rating, how do you break this down? Or is this an outlier? Is this someone who is an outlier in the case? Or how do you respond to that? Because those are pretty damning comments that somebody is sitting there not caring and shutting down the folks, the attorneys that are trying to get this done.

Ms. ESKENAZI. Absolutely. And that is not something that just turns overnight. I think cultural change takes quite a bit of time and a lot of work. I think that we have put a lot of great things in place at the Board during my 14 months as Executive in Charge. But clearly we are not there yet. Our Secretary is very committed to hearing constructive criticism, as am I, from all stakeholders. Ultimately we need to get it right for the veteran and we need to hear.

I mean, when I first heard about this hearing for example the first thing I did is send a note out to my entire staff providing them once again, the third time in three months, the no fear whistleblower protection rights that they have, and saying, look, we need to celebrate our successes and where we can do better we need to welcome our staff to feel safe to come forward and provide this constructive criticism. I actually met with Ms. Kordich in a very small group last week. The position of senior counsel has a very unique vantage point in our work at the Board and met with them around the table, went around one by one, and I said there is this hearing coming up, very concerned about the original title, "Data Manipulation and Mismanagement." And I said is there anything that you are aware of that we can work to do better? So Ms. Kordich did not bring to me all the things that she brought today, but I really look forward to setting a meeting with her and having more of a dialogue.

Mr. WALZ. Okay.

Ms. ESKENAZI. And again, I welcome all types of feedback, the good, the bad, the ugly.

Mr. WALZ. Is that the normal chain of command? I mean is this something, and she has got a chain of command, but if she is out

of it do they, do you think she felt like she knew she could just come to you and get this done?

Ms. ESKENAZI. I hope so. But clearly if people do not think that I need to work harder on that.

Mr. WALZ. Would that help if the Chair of the Board were confirmed and in this? Or is this something, is that irrelevant to what we are doing? You know, we said we had this opening, she talked about there is an opening with the Chair?

Ms. ESKENAZI. Yes, certainly that position has been vacant since February, 2012. I think that the right type of leadership can certainly——

Mr. WALZ. So two things there. Either that is a totally irrelevant position that should be eliminated, or somebody is really messing this up. And so my take on this is I do not know how to go home and explain something like that. Especially, I mean and candidly, is it just politics holding this up? I mean, and all of us are part of that.

Ms. ESKENAZI. I mean, I am not involved in that process. Obviously that is a political process. I can say that I have only been in this capacity in the past 14 months and during that time we have put a lot of good measures in place. And I am very proud of the work that our staff has done. We do have a lot of hardworking staff and I do not want to undervalue that statement. I mean, our staff have really pulled through this year. And many of them are veterans or family members of veterans. In fact just last month I supported a staff driven request to have what we call a veterans service forum, where the staff were meeting on a regular basis and putting, just educating others who may not have served on active duty about what it is like to serve on active duty. And I am very supportive of all these employee driven initiatives.

Mr. WALZ. I agree. And I appreciate it. And I think that is the right way. I think you know this too, and it keeps coming back up. This is a zero sum proposition, though. If one veteran is waiting for four years that is what the story is going to be. So we have to, I mean, this has to be beyond six sigma. I mean, that has to be your goal. And I know that is a challenge. I guess our take is on this is there any way to, you know, triage and spot check that? Dang, if they are waiting for a signature personally walk over there and grab it and carry it to the judge and say finish this one now? I mean, legally are you tied that you cannot do that from docket order?

Ms. ESKENAZI. We do triage wait times within the Board. We have a number of internal management tools that we use. We are very mindful of the fact that staff, you know, we do not want to pressure our staff. We want them to feel safe to do quality work and meet their production goals.

Mr. WALZ. I agree. I agree.

Ms. ESKENAZI. But we do monitor that to make sure that, I mean, right now we have a database that is basically based on people entering data into it. And sometimes we need to constantly check what is in the database and make sure that no veteran's work has gone, you know, neglected. And that is why I put in the report in December of ranking every single case under the Board's

jurisdiction and looking at it to see if there is any gaps or pitfalls and how we can assist.

Mr. WALZ. I appreciate it. And that technology, that is a whole other giant can of worms. Of why you are using an outdated piece of software when you have been given billions to not have that happen. That is another time.

Mr. COFFMAN. Very quickly, Ms. Eskenazi, according to the interviews from the Oversight and Investigations Subcommittee staff to Ms. Kordich, her testimony was to the effect that she took the issues to the union representatives and the union representatives had taken her complaints to your office. Is that correct?

Ms. ESKENAZI. I meet regularly with our partners in AFSCME 17. Actually we were supposed to meet with them this Monday and that meeting did not take place. And whenever they raise concerns, I am not aware of, you know, some of these things we have talked about before. And we look forward to continuing to partner with them. Our union representatives represent the bargaining unit members of the Board. But we are happy to talk to them about any of our staff or any concerns that anyone has. I appreciate the feedback.

Mr. COFFMAN. Well again, my understanding is that no action was taken on the complaints given. Can you elaborate on that? No action was taken by you on the complaints brought forward to you via union representatives?

Ms. ESKENAZI. Which complaints in particular?

Mr. COFFMAN. That of Ms. Kordich, that she testified on today.

Ms. ESKENAZI. Yes, I just saw her testimony today coming to this committee and there are many things in there, some of them I had not seen before. But again, I look forward to meeting with her or any others in the union, anyone at the Board, to continue to discuss these issues.

Mr. COFFMAN. It is my understanding also that by law you can certainly take a course, I mean, take a case out of the docket sequence, but you cannot adjudicate a case outside the docket sequence and yet you have been doing that to make the numbers look better. I wonder if you could comment on that?

Ms. ESKENAZI. By law we are required to adjudicate appeals in the order in which they are placed on the docket, which is commensurate with the point in time at the VBA level. We have certain exceptions to put in front of the line case, veterans over the age of 75, veterans with severe illness or financial hardship, homeless veterans, and we do that regularly. We have a docket that changes everyday and we try to adhere to that, again using kind of manual processes and antiquated databases. Under the rocket docket program cases were taken out of docket order legitimately to prescreen to get the development that may be needed to get the case more ready to go to a judge. There were a small number of cases that were actually adjudicated during that process out of docket order. But for the most part they were allowances where somebody had screened the case——

Mr. COFFMAN. But what does for the most part mean?

Ms. ESKENAZI. It means that there was about 400 that were decided out of docket order and the majority of those were actually allowances. So rather than putting the case back on the shelf——

Mr. COFFMAN. So to your knowledge there was no violations of law in that your employees took a case out of order and adjudicated that case in violation of current law?

Ms. ESKENAZI. I am sorry, could you repeat that again?

Mr. COFFMAN. That to your knowledge then there is no evidence that you are not aware that cases were taken out of sequence in violation of current law and adjudicated?

Ms. ESKENAZI. Cases were taken out of sequence for purposes of prescreening——

Mr. COFFMAN. In violation of current law?

Ms. ESKENAZI. There were some cases that were allowed out of docket order.

Mr. COFFMAN. And so to your knowledge no cases in violation of current law were taken out of docket order and adjudicated?

Ms. ESKENAZI. I just said there were some that were allowed out of docket order, yes.

Mr. COFFMAN. You are saying that that was within current law?

Ms. ESKENAZI. Again, there were some, a small number of cases that had been identified for the rocket docket screening. And rather than remand those cases, the——

Mr. COFFMAN. I am going to take it that that is in violation of current law. Very well. Thank you for your testimony.

Ms. ESKENAZI. Benefits were allowed for those veterans in a small number of cases.

Mr. COFFMAN. Okay. Ranking Member Kirkpatrick.

Mrs. KIRKPATRICK. I just have one question. I am really just trying to grasp the magnitude of this problem. Given your existing staffing and your existing resources, if you did not get another appeal, this is hypothetical I know. But if another appeal did not come in and you just had your existing caseload, how long would it take you to adjudicate your current caseload? No new cases.

Ms. ESKENAZI. That is a great question. The Board's inventory today, and this is both physically at the Board and in transit from VBA, is approximately 60,000 appeals. Given that in this past fiscal year we had dispositions of 52,000 appeals we could probably clear that inventory in just over a year using that same type of methodology. Keep in mind that a large number of the dispositions that we do at the Board are not final decisions. They are situations in which a circumstance has changed and we have to send back the appeal. So ordering perhaps a new examination to try and see if something can be obtained to substantiate that veteran's appeal. So built into this very unique appeals process that we have for veterans benefits law is a natural redevelopment cycle. And it is very unique among other legal systems that we have a system in which there is still an open record at the very end and still development work.

Mrs. KIRKPATRICK. Factor in that in your wait time. I mean, I am just trying to think from the veteran's perspective. So you said you have got so many cases right now, no new ones come in, I mean completely adjudicating the case so the veteran knows whether or not their claim has been processed. How long will that take?

Ms. ESKENAZI. Yes. And again, I want to restate my statement that no veteran should have to wait. I would like to turn to my

Chief Counsel for Policy who just started at the Board a couple of years ago, came from the United States Court of Appeals for Veteran Claims, and has studied this very unique process in depth for many, many years. And he is an expert on this topic of this unique process. Mr. Ridgeway.

Mr. RIDGEWAY. Sure. If you assume that we got no additional new cases we would have to do a regression analysis of what would happen to our current inventory. And historically what we would see is that about half of those cases would be resolved and then some veterans would have at least some of their issues remanded, and we would get about a third of those back. And then you would assume that, you know, half of those would get resolved, there would be more remands and then a third of them would come back. And so the number would go down from 60,000 to 20,000 to 7,000, just doing the math in my head. But that would still even with the regression be probably close to a little under two years, I would think, if I do the math.

Mrs. KIRKPATRICK. Okay. Thank you. Thank you, Mr. Chairman.

Mr. COFFMAN. Mr. Huelskamp, and then other members who have questions, I will entertain those questions.

Dr. HUELSKAMP. Thank you, Mr. Chairman. If I might follow on this question of the very long outstanding case with Mr. Hachey, and who was very busy for many, many days, who did receive a significant bonus I guess because of his business. But why did it take Mr. Hachey 250 days to return this case to the attorney?

Ms. ESKENAZI. Sir, I would have to look into the circumstances of that individual case. Mr. Hachey is one of the brightest employees at the Board. And every case at the Board does not necessarily move at the same rate of time and you have to look into the individual case to ascertain exactly the circumstances of that specific case.

Dr. HUELSKAMP. I cannot even fathom, 250 days? Just a wild guess of why——

Ms. ESKENAZI. We do have, we do have——

Dr. HUELSKAMP. Let me understand, if I could.

Ms. ESKENAZI. Certainly.

Dr. HUELSKAMP. So you have got to go in order, as I understand that. I presume during that 250 days he took every case out of order on top of it? Is that right? Or did he, he was doing other cases, right? For 250 days, I assume he was doing other cases, right?

Ms. ESKENAZI. He has many other duties besides adjudicating appeals. That is an ancillary duty for the position that he holds.

Dr. HUELSKAMP. If he worked on other cases was he taking them out of order, then?

Ms. ESKENAZI. Cases are distributed from our central case storage, and that is the point at which they are coming out of order.

Dr. HUELSKAMP. No, the question is was he taking them out of order? I presume he was not working on one case for 250 days. Is that correct? I mean, he got a significant bonus.

Ms. ESKENAZI. I am not aware of him taking cases out of order. There are certain circumstances——

Dr. HUELSKAMP. That is what I am trying to understand. I presume he did do one case and take 250 days. He took one case, put

it on his desk somewhere, or in the file, and he worked others, and then decided I am going to go back and do Mr. Cisneros. That is what I understand. What happened here? And if you can get back to me as well. And Mr. Ridgeway, we handed you that listing of the one judge that was waiting. Do you have any comment on that? That is your report, not ours. So can you describe why there is 24 cases waiting on this judge for over 100 days?

Mr. RIDGEWAY. This is not a report that I generate or I use. This is a tool that is used by other parts of the Board, so it is not one that I am competent to speak of.

Ms. ESKENAZI. Certainly I am happy to speak to this report. This is a report that was, we have many internal management reports. This is a report that is looking at how long a case has been in a particular location for individuals to ensure work flow and it is a management tool used so that when there are spikes in the numbers you can go to the person with that case and say what is going on in this particular situation? Is there something that you need assistance with to get this work done? As I indicated, there are certain cases that by law can only be decided by certain individuals, when a hearing is held. And that is why as I start the fiscal year and I am setting the hearing schedule for this year I ordered that for people that had certain levels of cases that only they could decide that they not be doing hearings for some time, since those hearing cases can only be decided by that judge. So we also have to understand that there are certain situations——

Dr. HUELSKAMP. I do not want to——

Ms. ESKENAZI. Sure.

Dr. HUELSKAMP [continuing]. Take up everybody's time with a long explanation. I just want an answer to why that judge is sitting on 24 cases. Thank you, Mr. Chairman. I yield back.

Ms. ESKENAZI. Thank you.

Mr. COFFMAN. Are there any further questions?

Dr. ROE. Just one brief one.

Mr. COFFMAN. Dr. Roe.

Dr. ROE. We have got to go vote. I do not think you ever answered the chairman's question.

Ms. ESKENAZI. Okay.

Dr. ROE. Ms. Kordich went to the union. The union did or did not come to you with a complaint, and you did or you did not address those complaints? Now is that, now that, I never did hear you answer his question.

Ms. ESKENAZI. There are——

Dr. ROE. There were issues she had. She addressed those issues through the avenue that she knew, which was through her union representative. Did that person come to you, or persons?

Ms. ESKENAZI. I have not specifically discussed Ms. Kordich with the union. Some of the issues Ms. Kordich raised I discussed with the union, but I have not been made aware that they came from Ms. Kordich.

Dr. ROE. Okay. So okay——

Ms. ESKENAZI. Today she——

Mr. ROE [continuing]. You just, okay, I got it.

Ms. ESKENAZI. Rocket docket I discussed with the union on a number of occasions.

Dr. ROE. You did not know it came directly from her?

Ms. ESKENAZI. That was not brought to me, no.

Dr. ROE. And that is all I wanted to know. Okay, that makes sense. I yield back.

Mr. COFFMAN. Mr. Takano, please quickly.

Mr. TAKANO. Quickly, Ms. Eskenazi, you said rocket docket you discussed a number of occasions with the union. Why? Why was it such a subject of discussion?

Ms. ESKENAZI. Well we have obligations under the contract in the department to raise matters with the union when it may be considered a change in working conditions and we interpret that very broadly. And every time we are about to start any type of a new program, even the poster contest that was referenced here earlier, we do a memo describing what we are about to do, provide that to the union, and offer them an opportunity to discuss. Sometimes they do step forward and we discuss the matter. Other times they receive the memo and they do not discuss.

Mr. TAKANO. Well my question is they were not bringing up objections to the fact that cases might be adjudicated out of order? That was not any part of what they were complaining about?

Ms. ESKENAZI. They had some concerns about the metrics used to select the cases for screening. And we used cases that had one or two issues and reasonable volumes in order to gain efficiencies in the screening process.

Mr. TAKANO. All right. Thank you, Mr. Chairman.

Mr. COFFMAN. Anyone else? Our thanks to the panel. You are now excused.

Today we have had a chance to hear about many problems and abuses occurring within the Board of Veterans' Appeals related to the processing of veterans benefits claims. From the testimony provided and questions asked today I am alarmed at the excessive delays of our veterans claims and the length the BVA will go in order to hide that fact. As such this hearing was necessary to accomplish a number of goals. First, to identify the tactics being implemented by the BVA to hide excessive delays in processing veterans claims. Second, to require VA officials to explain their actions with regard to this manipulation of data. And third, to determine what steps are being taken or will be taken to correct these issues and improve the processing of veterans claims. I ask unanimous consent that all members have five legislative days to revise and extend their remarks and include extraneous material. Without objection, so ordered.

I would like to thank all the witnesses and audience members for joining us here today on this critical issue.

Ms. ESKENAZI. Thank you.

[Whereupon, at 3:12 p.m., the subcommittee was adjourned.]

## APPENDIX

### PREPARED STATEMENT OF ANN KIRKPATRICK, RANKING MEMBER

Thank You, Mr. Chairman, and thank you for holding this hearing on this important topic.

I would like to thank the witnesses for coming today to appear before the subcommittee.

Over the last number of months we have become increasingly concerned that in the months and years ahead, we may be facing a new crisis with veterans waiting

too long for decisions on their appealed claims for benefits. This is a critical concern to all of us, and having a hearing on the board of veterans' appeals is long overdue.

I am concerned about the number of complaints and letters from various sources who have made significant allegations that employees may be attempting to game the system, are providing poor leadership, or that the electronic processing system, VBMS, of which taxpayers have invested hundreds of millions, is not performing adequately at the appeal level. Indeed, VBMS may not be ready for prime time.

We must be assured that the data we get is accurate and represents the reality faced by our veterans. As we saw in Phoenix, this is essential not only for our oversight purposes, but to ensure that senior VA leadership has an accurate picture in order to provide leadership, plan for increased appeals in the future, and ensure the appropriate resources and tools are applied to address the problems as they exist before we face another crisis.

I routinely hear from veterans in my district and in Arizona. They tell me that they are waiting years to receive a decision on their appeals. This is unacceptable. Our veterans deserve better.

This is what we are all focused on today—how to address the real delay faced by veterans. I think we can all agree that more needs to be done and that there is a real concern that we may be exchanging a backlog crisis for an appeals crisis.

Nationally, the average length of time to receive a decision on an appeal in FY 2013 was 960 days—nearly three years. Since then, the number of appeals has continued to grow. BVA projects a nearly 20% increase in the number of cases received at the board this year alone. As the VA continues to adjudicate claims more quickly, we should only anticipate the number of appeals waiting for a decision to increase. This means that without further action, our veterans will be forced to wait even longer for a decision on their appeals.

Another factor leading to additional delays is that almost half of the cases sent to the board are remanded back to the VA for additional evidence or due to errors on the part of VA. A remand adds nearly a year to the time it takes for a veteran to receive a decision. To veterans who have already waited patiently through the VA backlog, a period nearing four years for a decision on an appeal is intolerable.

Solutions are needed to ensure that we begin to reduce these delays and to ensure that the delay in appeals is not the next big crisis. I am hopeful that today's hearing will provide us with the opportunity to begin to identify solutions.

I am particularly interested in hearing from Congressman O'Rourke about a voluntary alternative appeals process he developed with DAV. This may be one solution to decrease the amount of time our veterans must wait for decisions on their appeals.

Another solution may be that more data is needed, not just better data. Congress, VA, veterans, and VSOS should all trust the quality of the data we are getting, and be satisfied that the data we are getting provides us with the information we need.

I wish to thank the American Legion for emphasizing this in its testimony. VA provides an extensive amount of weekly data on VBA claims. By comparison, the board of veterans' appeals provides an annual report. I hope that we can begin the discussion today on how we can provide veterans with a better understanding of where we should be with regards to reaching timely outcomes on appeals.

Simply put, veterans should receive better timelines and information than they currently get and congress should be receiving more frequent updates on the performance of BVA. Providing more comprehensive and accurate data will better enable us to provide oversight and work with BVA to find solutions to problems before these problems reach crisis status.

Thank you, Mr. Chairman, and I yield back.

**Written Testimony of Kelli Kordich**

Senior Counsel, Board of Veterans' Appeals,
Department of Veterans Affairs

House Committee on Veterans' Affairs
Subcommittee on Oversight and Investigations

"Metrics, Measurements, and Mismanagement in the Board of Veterans's Appeals"

September 10, 2014

Thank you for inviting me to appear before you today. My name is Kelli Kordich and I am a Senior Counsel at the Board of Veterans' Appeals in Washington, D.C. I am also an Army veteran having served in the United States Army Transportation Corps for 4 years attaining the rank of Captain. I started working at the Board in December 1999. I am here today because as a veteran I am appalled and saddened by the unchecked mismanagement, corruption, and blatant disregard for out nation's veterans that has become characteristic of Board management in the pursuit of processing appeals at breakneck speed for management's own self-preservation, rather than for the good of veterans. I am also here as the voice for the many Board employees mired in a toxic management system that uses a culture of fear and intimidation to attain its goals. The Board's management is ruthless in stifling criticism, going so far as to weaponize the Department-wide ICARE principles to label critics as anti-veteran. All of the information I give you today has been backed up with evidence based on exhaustive research by myself and other dedicated employees at the Board who are desperate for the corruption and mismanagement to end, but who justifiably were too afraid of retaliation by Board management to offer testimony today.

**The "Old Case" list**

On June 26, 2012, Mr. William Preston, President of AFGE Local 17, sent Secretary Shinseki a letter via email. This letter notified the Secretary that the Acting Chairman's front office staff at the Board of Veterans' Appeals (Board) was responsible for unnecessarily delaying appeals filed by veterans and their families. Mr. Preston attached a redacted list, dated May 10, 2012, which provided a snapshot illustrating some of these unconscionable delays. The list showed that the Principal Deputy Vice Chairman Laura Eskenazi (subsequently appointed to the position of Vice Chairman by Secretary Shinseki) had held five cases in her possession for well in excess of 100 days (specifically, 227 days, 198 days, 177 days, 156 days, and 120 days). The list also showed that Chief Counsel for Operations, Donnie Hachey, had held cases for over a year, specifically for 415 days, and had held other cases for more than half a year. Most of the cases involved decisions on appeals of waiting veterans that already had been prepared by Board attorneys and

were simply awaiting the signature of Ms. Eskenazi and Mr. Hachey in their capacity as Judge or Acting Judge.

When the Acting Chairman's front office became aware that the union local might have obtained data implicating its own personnel, appallingly, the Acting Chairman's staff was directed to manipulate the Board's electronic record keeping system known as Veterans Appeals Control and Locator System ("VACOLS") by shifting around the oldest languishing cases to others in the front office. This had the effect of resetting the calculation of how many days the appeal had languished in one location. For example, rather than reviewing and signing a case that had been in his possession for 60 days or more, Mr. Hachey simply accessed VACOLS and electronically charged the case to other attorneys assigned to the front office. This resulted in VACOLS closing out the calculation of days the case had languished in Mr. Hachey's possession, and beginning a new count based on the days of these other attorneys who now had possession of the cases. The cases in question had been prepared by attorneys other than those who Mr. Hachey transferred them to, and the electronic transfer was a farce designed to make it appear in future VACOLS queries that Mr. Hachey had no cases in his possession that were older than 60 days. This behavior was not limited to Mr. Hachey, but was used by other front office personnel as well.

At the same time that the front office began to electronically transfer the old cases, Ms. Eskenazi and Mr. Steven Keller (former Vice Chairman and the Acting Chairman at the time, now retired) had a member of the Board's IT staff modify the VACOLS report function that produced the list presented by Mr. Preston. As modified, the report now conspicuously excludes all members of the front office (by assigning them to the designation "D5", and removing "D5" from the categories subject to the data inquiry) although it continues to include all attorney and Judges who are not assigned to the front office. The modification ordered by Ms. Eskenazi and Mr. Keller prevents the report from showing how long appeals are being neglected in the hands of front office personnel.

At the same time that the Chairman's front office staff were holding cases for an unconscionable amount of time, attorneys writing cases on the Teams were being terrorized by management for holding cases even for 30 days being informed that they my be disciplined for holding cases a certain amount of time. Emails dated in May and June 2012 from Chief Judge Kimberly Osborne indicates possible disciplinary actions for attorneys holding cases for 30 days or longer.

Secretary Shinseki forwarded Mr. Preston's letter to his then Chief of Staff (Mr. Gingrich), who asked Mr. Keller and Ms. Eskenazi to look into the matter. Unsurprisingly, as Mr. Keller and Ms. Eskenazi had participated in and condoned the very behavior they were charged with investigating, no action was taken, and no person in the front office was disciplined. Apparently, Mr. Keller and Ms. Eskenazi told the Secretary that ALL the appeals at issue were old because they were being held in abeyance owing to various problems. Unfortunately, this is untrue. Longstanding Board policy calls for cases requiring abeyance to be charged to specific VACOLS locations, rather than to a specific individual, in order to avoid the problem of an appeal being charged to an individual who has no control of the case. Their explanation was also untrue for another reason, in that appeals placed in abeyance are usually done so before a decision is written, as Board attorneys are trained to avoid spending time writing a decision that may have to be redone following the end of the abeyance period.

In addition, almost all of the appeals identified in the list presented by Mr. Preston as languishing in the hands of the front office staff in fact had decisions already written by an attorney for the particular member of the front office, and were actually only awaiting review and signature. It may be that after gathering dust in the hands of the front office personnel involved, a handful of the cases eventually had information or evidence come in that then required placing the case in abeyance, but this would have been incidental to the reason those persons held onto the cases for so long, namely simple neglect. The term "abeyance" at the Board refers to postponement of an appeal in light of required administrative action; it is an abuse of the term to use it for mere untimeliness on the part of a Judge in getting around to reviewing the case. I was the Chief of Litigation Support at the time and prepared decisions in some of those cases that Mr. Hachey had held for more than 6 months, and can attest that those cases were not being held in abeyance, but were merely awaiting Mr. Hachey's signature (specifically the Cisneros decision, that languished in Mr. Hachey's possession for over 234 days and was a simple remand for a VA examination).

The front office personnel who held cases the longest were not disciplined, but rather were rewarded by bonuses at the end of the year in December 2012, and were also promoted:

Ms. Laura Eskenazi to Vice Chairman
Mr. Donnie Hachey to Judge (no application appointed by virtue of his job title)
Ms. Marti Hyland to Judge
Ms. Bethany Buck to Judge

**Significance of the data from the "old case" list**

Ms. Eskenazi, who in 2012 was the Principal Deputy Vice Chairman and who since has been appointed as Vice Chairman, had 4 cases on the "old case" list that were particularly egregious. From the time those cases were transferred to her control by central case storage to the time she signed the cases, the appeals languished anywhere from 6 months to a year, with most of the delay accounted for by Ms. Eskenazi herself. She began to take action on the cases closely coincident with the creation and disbursement of the "old case" list on May 10, 2012. Three of the four cases ultimately involved a simple remand or a grant of an issue along with a remand for further development. In two of the cases, Ms. Eskenazi took actions consistent with an attempt to hide the length of time the cases had been in her possession. Specifically, charging a case to an attorney, where the next person charging the case is not the attorney but rather is again the judge is a familiar pattern at the Board of fake charging to reset the VACOLS clock that monitors how long a case has been in one location.

Mr. Hachey, who in 2012 was the Board's Chief Counsel for Operations and who since has had his position modified to include the duties of a judge, had 14 cases on the "old case" list which represented a cavalier and harmful attitude toward the appeals under his care. The total

processing time involved in these cases ranged from 6 months to well over a year, with one case reaching 606 days. In every case, the ultimate disposition was either a grant of all issues, a grant of an issue with a remand of others, or a remand of all issues. In addition, the VACOLS data shows that on and after May 10, 2012, Mr. Hachey engaged in a pattern of attempting to hide the length of time he had held onto a case, even going so far as to charge the case to an attorney who had no business reason to have the case.

Ms. Buck, who in 2012 was the Executive Assistance to the Chairman, and who since has been appointed as a judge, had 6 cases on the "old case" list that are troubling. Although there is no indication that she attempted to hide how long she had allowed appeals to languish in her care, most of the cases remained unworked by her for 9 months to over a year.

Ms. Hyland, who in 2012 was an attorney in the Board's Appellate Group and who since has been selected for appointment as a judge, had 4 cases on the "old case" list which were particularly egregious. The VACOLS data shows she held onto the cases for months, until the May 10, 2012 list prompted her to finally have her cases assigned.

**Administrative Investigation Board (AIB)**

After union President William Preston sent out his email to the Secretary about the old case list in 2012 and when it was swept under the rug, many employees at the Board were fed up with the shenanigans going on at the Board without consequences, and apparently an employee sent the former Chief of Staff (Gingrich) an anonymous letter dated in August 2012 unleashing a large amount of information. Not only about the old case list but about discrimination, abuse of power, mismanagement etc. perpetrated by management.

In January 2013 an Administrative Investigation Board (AIB) was set up by the VA General Counsel to investigate fraud, waste, abuse of power, and discrimination at the Board. It was found out when employees started being notified of dates for testimony. At first Mr. Preston and the rest of us were happy that finally someone was going to investigate management for the appalling mess they had made at the Board without consequence. However, we got suspicious when the VA Office of General Counsel attorney who was a member of this AIB panel was the attorney that was actively defending the Board of Veterans Appeals against the very same thing the Board was accused of in the anonymous letter. His name is Richard Johns.

Mr. Preston, as the union President, sent a letter to Will Gunn (the then VA General Counsel) indicating Mr. Johns should recuse himself. Mr. Gunn, through the chair of the panel, Ms. Edwards, who is no longer employed by VA, indicated this did not pose a conflict and Mr. Johns would not be removed. We also thought it was strange that this AIB started calling witnesses in alphabetical order instead of calling witnesses who may know something, or those mentioned in the anonymous letter for a start. It was not until a friend of mine, a Judge at the Board, Mark

Greenstreet (now retired) wrote his Congressman Eric Cantor that Mr. Johns was taken off the AIB. Mr. Preston also wrote a letter giving Mr. Gunn an idea as to who to call as witnesses, which included myself and Mr. Preston and a few others. I testified for approximately two and a half hours telling them about the old case list and other things I had witnessed. The AIB panel first let me read the anonymous letter then asked me to comment on what was in the letter. The AIB also asked for some documents, such as a diary I kept concerning what happened to me while in the front office and the old case list documents.

Mr. Preston also testified for many hours and so did Chief Judge Robert Sullivan. Then the AIB stopped abruptly, the rest of the witnesses that Mr. Prestion suggested the AIB call were not called and the whole thing folded up without a word. This reaffirmed our concerns that the whole thing was just a sham. We were not told why and what had happened to our testimony or the documents we provided to the AIB. We figured that either the Secretary, Mr. Gunn or the Chief of Staff or all of them realized all this information was damaging and just pulled the plug on the so called investigation. We also are fearful that the AIB panel members provided information about witnesses' testimony to Board management.

Mr. Preston and his union stewards tried to get information from Mr. Gunn and asked him to turn over the transcripts of testimony but he refused and stonewalled the union. What we do know is that they stopped this investigation when embarrassing information came out and again Board management and their fraud and mismanagement was covered up.

**The "Rocket Docket" Program**

Currently, the Board docket number assigned an appeal is based on the date the "substantive appeal" is received with respect to that appeal. This "substantive appeal" is typically in the form of a VA Form 9, Substantive Appeal to the Board of Veterans Appeals.

The law mandates, with few exceptions, that cases must be adjudicated by the Board in docket order. Under 38 U.S.C. section 7107(a):

(1) Except as provided in paragraphs (2) and (3) and in subsection (f), each case received pursuant to application for review on appeal shall be considered and decided in regular docket order according to its place upon the docket.

The referenced exceptions to the docket order mandate respectively include when an appeal is advanced on the Board's docket, when an appeal is delayed to accommodate a request for a hearing, and when an appeal is screened by the Board for the purpose of "determining the adequacy of the record for decisional purposes", or for "the development, or attempted development, of a record found to be inadequate for decisional purposes." There is no statutory exception to the docket order mandate to decide cases out of docket order because they are "easy" or can be granted quickly.

On or about 1995 or 1996, Charles Cragin, then Chairman of the Board of Veterans' Appeals, ordered the pre-screening of cases (a process now referred to as "Rocket Docket" screening), in response to a large backlog of cases at the Board as well as case storage concerns.

The attorneys who were selected as the screeners were responsible for identifying those cases requiring further development through the mechanism of a remand. The screening attorneys did not have permission to decide cases identified through the program as "easy" allowances or grants. Under Chairman Cragin, and for efficiency, the screening attorney was also the attorney responsible for preparing the remand to be dispatched. This program resulted in the processing of appeals out of docket order, and the program was terminated after approximately one year. According to Chief Judge Robert Sullivan, Chairman Cragin terminated the program out of fear that word would get out that the Board had been processing a large number of appeals out of docket order, leaving older-docketed appeals to languish so that the Board could use the quick remand of newly-docketed cases to inflate its production numbers.

At the beginning of Fiscal Year 2014, Vice Chairman and "Executive in Charge" Laura Eskenazi announced that she had met with Secretary Shinseki and that the Board's production goal for Fiscal Year 2014 (October 1, 2013 to September 30, 2014) would be the dispatch of 55,170 appeals decisions, which is a goal higher than any ever set for the Board, and which is higher than the Board has ever achieved since the advent of judicial review in 1988. After dismal production numbers for October 2013 which showed that the Board was not on track to achieve the FY production goal, management on or around November 7, 2013 implemented the Rocket Docket program, modeled after the 1995/1996 program, to supplement the Board's productivity. The program suffered from the same inherent unbalanced diversion of Board resources to easier and more recent appeals at the expense of older appeals as with the incarnation of the program in the mid-1990s. The new Rocket Docket program also manipulated the Board's workload to generate more remands in order to meet fiscal year productivity goals.

A December 13, 2013 email from Vincent Chiappetta, a member of Ms. Eskenazi's staff, detailed the parameters of management's new Rocket Docket Project. Unlike the 1995/1996 project, the appeals selected out of docket order would ultimately include not only remands, but allowances/grants as well. In addition, unlike the 1995/1996 project, the attorneys screening the cases did so on an overtime basis, and would not be the same attorneys who prepared the remands or grants/allowances; instead, a second group of attorneys would prepare the remands or decisions, and also did so on an overtime basis. Thus, the program as implemented inherently involved duplication of work and overtime pay, as the screening attorney could have easily prepared the remand or decision after having just reviewed the case. The December 13, 2013 email also notes that the cases selected for screening would not include box cases (meaning multi-volume cases placed in boxes), and would be limited to appeals involving only 1 or 2 issues. As implemented, the Rocket Docket program ensured that veterans with a multiple volume or issue appeal never had a chance of having their appeal screened. Instead, only the appeals of those veterans accommodating enough to have small cases or a limited number of issues would be considered for the Rocket Docket program, as those cases allowed management to cherry-pick cases in order to pad the Board's production numbers and receive a bonus at the

end of the year. In addition, approximately 100 cases were allowed/granted under the Rocket Docket program, while a large volume of appeals with older docket numbers languished.

Approximately 1,100 appeals were added to management's goal of 55,170 decided appeals through this program.

When Judges and Acting Judges hold video and travel hearings, there is a computerized docket sheet to complete after each hearing to document if the hearing was held, whether the record is being held open for evidence, whether a copy of the transcript of the hearing was requested, and for notes. After the Rocket Docket program was implemented, an additional category was added in which the Judge or Acting Judge could select "Rocket Docket"; this selection meant that the Judge or Acting Judge had decided that they will either remand or grant the appeal. Once the Rocket Docket category is marked, the Board's hearing unit sends the case file up for adjudication as soon as the transcript of the hearing is completed. Many of these Board hearings have very recent docket numbers, as the Board tends to conduct the hearings within a reasonable time after the hearing is requested. Consequently, those veterans with more recent docket numbers whose hearing was conducted after November 2013 now have an increased chance of having their case remanded or granted sooner than those veterans with older docket numbers who had a hearing prior to the advent of the option for the presiding Judge or Acting Judge to select the appeal for expedited consideration. This is yet another means through which management allows the processing of cases out of docket order at the expense of veterans with older docket numbers or who are not savvy enough to request a hearing to see if their case may be considered for the Rocket Docket Program for quicker adjudication.

Ultimately, over a thousand appeals were identified as requiring quick remands, and were then immediately processed regardless of docket order and dispatched from the Board under the auspices of the Rocket Docket program. Although the statute allowing for screening of such cases only allows processing of the appeals for the purposes of development, about 100 of the appeals screened were in fact then decided as part of the program, and many of those were decided out of docket order because they were considered easy allowances. Management had full access to the report in VACOLS which showed that cases in the program were being decided when they should not have. Management allowed the program to continue until it was suspended by management in June 2014.

Secretary Shinseki resigned on Friday, May 30, 2014. On Monday June 2, 2014, in an email, Chief Judge Cheryl Mason notified the Board that the Rocket Docket Project had been suspended immediately. Apparently, Ms. Eskenazi, realized that once Secretary Shinseki was gone, there might be resistance from fresh eyes to her policy of adjudicating veterans' cases out of docket order, and in allowing older cases to gather dust while easier cases were decided first in the name of achieving her production goals and securing another bonus.

In a subsequent email sent later the same day, Chief Mason clarified that the Rocket Docket program was only temporarily suspended due to low participation, and to a low number of cases meeting the criteria for screening. Unfortunately, a review of the record of attorney volunteers does not support Ms. Mason's explanation as to low attorney participation. That records shows that although there were fluctuations in attorney participation during holiday periods, the level of

attorney participation in the few months prior to the suspension of the program was stable, and did not evidence a lower than usual participation rate in the program. As for the low number of cases meeting the criteria, management could have altered their screening requirements to allow for box cases and cases with more than two issues to broaden the pool of cases.

On June 13, 2014, Ms. Eskenazi sent a Board-wide email seeking to justify the Rocket Docket Program, indicating that cases could be taken out of docket order in order to develop cases under 38 U.S.C. section 7107(f). However, conveniently she did not mention that many cases dispatched in the Rocket Docket Program were allowed/granted, thus adjudicating cases out of docket order, which is not sanctioned by 38 U.S.C. section 7107(f).

Although trainee cases (those cases used for new Board attorney hires) are not part of the Rocket Docket program, it is worth noting that trainee cases are frequently decided out of docket order, and there is no exception which covers those cases. Trainee cases are those case storage believes are suitable for new hires.

**Perverse Incentives**

By March 2014, management realized that the Rocket Docket program alone could not hope to generate enough decided appeals to meet her goal of 55,170 cases decided. Management does not have the option of squeezing more cases out of the attorneys, because their production goals were negotiated by a union. Attorneys are required to submit and have signed 3 credits a week to their Judges. A case, or appeal, is worth either 1 or 1.5 "credits". With increasingly complicated cases and multiple issue cases this requirement can be a challenge during the best weeks. Even when attorneys are on leave they are responsible for having 3 credits signed during the week, and thus must be ahead in production before leave is taken, or face discipline; no exception to this policy is given for brief illness or medical appointments.

In order to meet the lofty production goal, and as Board Judges are not protected by a union, management in March 2014 (halfway through the fiscal year) decided to change the production goals for the Judges in two ways. The old production goal for a Judge was 752 signed credits for fiscal year 2014. Management first determined that the Judge goal would now be based on cases, and not credits (although attorney goals are still based on credits); that is, each appeal decided by a Judge now counts only one toward his or her goal for the year. Management then changed the goal from 752 to 834 cases to be successful, and inexplicably made the change retroactive to October 1, 2013. For an "outstanding" rating, management indicated that a judge would need to sign 1,002 cases by September 30, 2014 (this information was conveyed in an email from Ms. Eskenazi with attached letter sent to Ms. Eskenazi from the Judges' Professional Association). Immediately prior to this mid-year change in Judge goals, most Judges were at goal or above goal. Once the change was implemented, many judges were below the minimal goal. Unsurprisingly, Judges complained that this sudden, dramatic and retroactive increase in production requirements meant that they could not review case submissions by attorneys for correctness, and instead were forced to just turn to the last page and sign their name to the decision. Management's sudden and draconian change in the Judge production requirements is

resulting in a huge disservice to veterans, as most veterans presumably would prefer their case to be decided by a Judge with the time to decide their case correctly.

Another unfortunate and veteran-unfriendly result of management's haphazard changing of production goals is that there is now a disincentive for Judges to make use of a development tool specifically authorized by Congress. Under 38 U.S.C. section 7109, the Board may seek out an independent medical opinion (IME) in certain cases. The Board may also seek out an internal medical opinion through the Veterans Health Administration (VHA). The advantage to the veteran in having the Board use the IME/VHA process instead of a remand is beyond debate, as the IME/VHA process shortens the time it takes to obtain an opinion by months to years in virtually each case.

Traditionally, the Board awarded credit to an attorney who prepares either type of request (IME opinion or VHA opinion) and credit to the Judge who signed either type of request. In tying Judge goals to cases, rather than to credits, management has now created a disincentive for a Judge to sign such a request. Although the attorney would still get credit for the request, the Judge would not, because it is not a decision on an appeal for the Board's reporting purposes. Consequently most judges, when faced with an appeal well-suited for an IME opinion or VHA opinion request, will nevertheless now remand the case in order to have the case count for their yearly goal. As a direct result of management's changing the Judge production goals in a manner that is not neutral to veterans, many veterans will now have to wait years for their appeals to return to the Board for a decision.

Research shows that with the advent of the new production standard in March 2014, the Board has seen a 47 percent decrease in the monthly number of IME and VHA opinions requested.

As a result of management's sudden and draconian change in production standards, and in order to protect themselves from further unattainable requirements levied upon them, the Judges began the process of unionizing, and filed a petition with the Federal Labor Relations Authority. Prior to management's actions, the Judges were not considering taking any such action.

**Confusion in Case Management**

In a June 2, 2014 email sent at 4:16 p.m., a case storage supervisor noted that based on guidance from Ms. Eskenazi, those cases with June 2011 docket dates and earlier would be automatically sent to the work groups in the Office of Veterans Law Judges. (The Office of the Veterans Law Judges is separate from the front office at the Board, and consists of 10 Chief Judges, each of whom supervises a work group comprised of approximately 5 Judges and approximately 40 attorneys). This represented a complete change in the procedure for ordering cases from case storage, and was driven by management's fear that the Board's adjudication of cherry-picked cases outside of docket order would be discovered. Management is now scrambling to get cases out of case storage that had an old docket number by forcing them into the hands of Judges to transfer responsibility in the case inquiries are made concerning the languishing of those case.

On Wednesday, June 4, 2014, Ms. Eskenazi had her usual Executive-in-Charge meeting at 9:00 a.m. with Board supervisors. At the meeting she voiced her concern that due to the scandal with VHA, the Board may be soon investigated by Congress, and that Board management must now portray integrity and transparency.

On June 27, 2014, Chief Mason sent out an email to her judges and attorneys noting that there were still a large number of old docket number cases that had been at the Board for a long period of time. She asked that all Judges and attorneys run reports and give her an update on the status of their oldest docket cases immediately.

In addition to cases with old docket numbers lingering in central case storage (the numerical designation in VACOLS for central case storage is 81, and cases in central case storage are ones which have not yet been assigned to an attorney to process), there are cases that have been in case storage for over 400 days. Management apparently is not providing much in the way of oversight of their case storage staff, which includes two GS-15s and a now-vacant SES Chief of Management Planning and Analysis (MPA) (the prior occupant of that position now serves as the Principal Deputy Vice Chairman SES). The system is clearly broken, and does not have anyone competent in charge to organize proper case flow. Prior to management's re-organization of the Board in December 2012 and the Rocket Docket campaign of processing cases out of docket order, there were no case flow problems. Now, management has ordered the forced movement of hundreds of cases into Judges' hands, regardless of whether those cases can be worked. Moreover, according to Chief Mason's email dated June 27, 2014, it is now the job of the Judges and attorneys to run case storage reports to track the age of their cases instead of the MPA staff headed by top level management who apparently cannot do their jobs.

For several years, the Board's top management has progressively either added high-level positions to the front office staff, or reclassified positions into a higher paying grade. The Board is now top heavy with SES, SLS, and GS-15s in the front office and management level. For such a small staff office within the Department of Veterans Affairs, the Board has 5 SES positions, 2 SLS positions, and 5 GS-15s positions (with 2 more having recently been created by management in the front office) in the front office alone. Despite large numbers of high level staff the Vice Chairman now commands, management nevertheless was unable or unwilling to pay attention to the cases languishing in case storage until it became a potential source of embarrassment to them with the recent Congressional and media attention to unconscionable delays in veterans' cases.

In addition, although Ms. Eskenazi now tries to rally the Board by wrapping herself in the American Flag and stressing that her goal is to help veterans, this exuberance and patriotism was well hidden and did not surface until she was faced with having the Board achieve the goal of dispatching 55,170 cases. In fact, neither Ms. Eskenazi nor a single member of her front office management (Principal Deputy Vice Chairman, Chief Counsel for Operations, or Chief Counsel for Policy and Procedure) is a veteran. None of Ms. Eskenazi's 10 Chief Judges are veterans, and none of Ms. Eskenazi's last 11 Judge recommendations in September 2013 and May 2014 included veterans. In fact, there has not been a veteran selected as Judge since 2010.

In addition, Board Management is ruthless in shifting criticism, going so far as to weaponize the Department-wide ICARE principles to label critics as anti-veteran. The Board's management style is that of fear and intimidation which has been the norm for years.

Morale is not helped by mixed signals management sends to the employees. Board management let an employee go during her first year (last week of August 2014) by indicating she had problems with the quality of her work. Yet at the beginning of August 2014 she received an incentive award for producing a certain amount of cases within a defined time period which included a monetary award. Board management gave this employee an award for production and turned around and let her go for her quality, yet cases were signed regardless of quality in order to squeeze cases out of this attorney.

Morale has never been this bad since I have been at the Board. Many attorneys are forced to work unpaid overtime to meet these lofty goals. Because of the culture of fear and intimidation cultivated by management, employees find it difficult to express themselves because any form of criticism is met with swift retaliation. When management had a poster contest to promote the 55,170 goal, attorneys were so angered by management's cavalier attitude toward those who actually do work on the cases that they responded with a poster of their own in the form of gag poster. Management responded to the gag poster with an email from Ms. Eskenazi accusing the creator of the poster as being anti-veteran.

In addition, due to employees fear of retaliation, employees have sent anonymous letters to Secretary Shinseki concerning management however he would ask the Vice Chairman to inform employees that they should file complaints instead of realizing there might be a problem at the Board. Also, one employee notified VA IG of the Rocket Docket problem, but was never contacted by the IG.

**Counting Cases Multiple Times**

In a March 26, 2014 email, Sonnet Bush, now Gorham, noted that there had been a settlement agreement reached in the case of *National Organization of Veterans' Advocates, Inc. v. Secretary of Veterans Affairs*, 725 F.3d 1312 (Fed. Cir. 2013), which implemented VA's plan to remedy any harm to potentially affected appellants that may have been caused by the Board's failure to adhere to *Bryant v. Shinseki*, 23 Vet. App. 488 (2010) and 38 C.F.R. section 3.103 after the Government conceded that the 2011 rule abrogating Bryant was invalid. The Board decisions involved were known at the Board as "*Bryant*" cases. Potentially affected appellants included all claimants who received a hearing before the Board, and who received a final Board decision at any time from August 23, 2011 through June 18, 2012, in which the Board cited to the invalid 2011 rule, to *Bryant*, or to 38 C.F.R. section 3.103.

Ms. Gorham indicated in the email that the Board offered 1,025 potentially affected appellants the opportunity to vacate a prior Board decision, with the option to appear for a new hearing. Approximately 400 appellants elected to have their Board decisions vacated. Deputy Vice

Chairmen David Spickler and Joaquin Aguayo-Pereles and two attorneys from the front office completed the orders to vacate noted in this email.

In reporting its productivity, the Board not only counted the dispatch of the original decisions that had violated *Bryant*, but also counted the vacaturs of those decisions, as well as the reissuance of the new decisions after correction of the *Bryant* violations. In other words, the Board has counted the same underlying case three times when reporting its production, thereby manipulating the production numbers reported to VA and to Congress. This manipulation has also given a boost to management's efforts to achieve the goal of dispatching 55,170 cases, as at least the vacaturs and re-issued decisions each counted twice during the current production year.

I hope I can further illuminate for this Committee the increasingly toxic and veteran-unfriendly actions that Board management has adopted in pursuit of their own agenda.

**STATEMENT OF**
**ZACHARY HEARN, DEPUTY DIRECTOR FOR CLAIMS,**
**VETERANS AFFAIRS AND REHABILITATION DIVISION OF**
**THE AMERICAN LEGION**
**BEFORE THE**
**COMMITTEE ON VETERANS' AFFAIRS**
**SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS**
**UNITED STATES HOUSE OF REPRESENTATIVES**
**ON**
**"CASES LANGUISH AND DATA MANIPULATED AT THE BOARD OF VETERANS' APPEALS"**

**September 10th, 2014**

The American Legion, on behalf of our National Commander Michael Helm and the 2.4 million members across this nation, is here to reaffirm our commitment to building a strong VA to serve the needs of this nation's veterans.

The Board of Veterans' Appeals (BVA) has served as the overall appellate body for VA claims prior to being appealed to the Court of Appeals for Veterans Claims. BVA annually adjudicates thousands of claims for veterans electing The American Legion as their power of attorney (POA).

Through September 1, 2014, BVA has adjudicated 8,366 claims that The American Legion has POA. Of those 8,366 claims, 2,330 previously denied decisions by the VA regional offices have been overturned, resulting in a grant of benefits to the veteran. 3,904 claims have been remanded, indicating that claims have been improperly developed and prematurely denied and require additional work by the Department of Veterans Affairs (VA) to ensure they are properly adjudicated, and 1,762 claims have continued as a denial. The combined percentage of granted and remanded claims for veterans with American Legion as their POA at BVA is 74.5 percent.

A common complaint The American Legion receives from veterans typically occurs when the veteran calls the BVA. When a veteran asks what the date of the docket is that they, BVA, are working; a median date is provided of all cases within their caseload. This statement is as confusing to the veteran as it is misleading.

In this fiscal year, 46.6% of all claims have been remanded for improper development. Some of the reasons these claims are remanded, or returned, are for additional records or medical examinations. Many of these claims have been remanded on multiple occasions – this is commonly referred to as the "perpetual remand cycle" and results in months, and even years passing before these claims receive their final adjudication. Additionally, when asked to report the date that BVA is reviewing, the BVA representative will report a random date selected from


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somewhere in the middle of their workload, rather than the oldest date in their stack. It is not uncommon to have a case remanded with a date several years old, but not have that date reflected in BVA's workload report. This type of reporting is not accurate.

BVA has an obligation to complete claims, with few exceptions, in docket date order; in other words, first case in-first case out. If an American Legion accredited representative prepares an informal hearing presentation today, and that claim has a docket date of January 2005, there is no way that VA is working a docket date of January 2013, as VA is compelled to work in docket date order. This is an example of how BVA would report erroneous data.

Recently, BVA has instituted "Rocket Docket", a program instituted by BVA to quicken the response times for claimants pursuing appeals. Under this program, a BVA representative would review selected one or two-issue claims upon arrival at BVA and determine if the claim should be included into the "rocket docket" program. If selected, the claim would then be forwarded to the claimant's selected POA. The POA would then conduct a review and return the claim to BVA for further adjudication. If the POA agreed, then BVA would adjudicate the claim nearly immediately.

The American Legion supports BVA trying to expedite the process; however, this program has been problematic and frustrating for veterans. Most veterans have waited not months, but years, to have their claims adjudicated, and while this program proves beneficial to the selected veterans, it only places more claims ahead of the majority of claims that have been waiting for an extended period of time. While The American Legion has participated in the program; we have reservations about its effectiveness. If BVA exists on the premise of "docket date" order, then we question why BVA is expending time and resources to work out of assigned docket dates.

**The American Legion at The Board of Veterans' Appeals**

The American Legion employs accredited representatives at the BVA; for many veterans, these dedicated men and women serve as the veterans' last chance to have their claim reviewed before leaving VA and appealing to the Court of Appeals for Veterans Claims. For those with experience representing veterans at BVA there is a high degree of frustration because claims are repeatedly remanded for further development.

Organizationally, we have dedicated hundreds of thousands of hours and millions of dollars to identify common problems within the VA adjudication process for the purpose of making recommendations to help streamline and fix access hurdles. American Legion representatives regularly visit VA regional offices and dedicate much of our time to seeking improvements for our own service officers' methods of representing veterans, and also work to help find common


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errors within the VA regional offices processed records. Unfortunately, these visits have often been met with skepticism and resistance by VA.

During a recent visit to a VA regional office, an issue arose where a veteran on two separate occasions received decisions that were harmful to the veteran, costing him, at minimum, disability compensation compounded over a number of years. This issue was brought to the attention of senior staff within the VA regional office. During this conversation, the VA senior executive stated that the error should not be the fault of the current rater but that of the previous rater. In short, he indicated that The American Legion should not "pin the blame" on the most recent rater. Finally, he indicated that the veteran will receive the proper compensation for the corrected decision.

Each rater has an obligation to review the entirety of each veteran's claim. Additionally, the loss of earned benefits cannot simply be "made up" by providing a retroactive payment. For this veteran, the lack of a proper granting of benefits not only resulted in a lack of proper compensation due to conditions incurred in military service, but it may have resulted in a lack of proper medical care, waiver of funding fee for mortgage, or federal hiring preference, or any number of lost benefits that the veteran would have been entitled to had his/her claim been properly decided the first time. Moreover, the veteran could have potentially lost her home due to the lack of compensation, experienced family hardship, or developed severe mental anguish and depression due to a lack of treatment. In short, VA's errors cannot simply be always rectified through issuing a retroactive check.

**Recommendations**

That The American Legion urges Congress to pass legislation requiring the Department of Veterans Affairs (VA) to provide, in a venue readily available to the citizens of the United States, a monthly report of the number of claims for compensation and disability that were submitted, that were granted/awarded, that were denied and that remain in a pending status.[1]

This data should be included in the Monday Morning Workload Report as the Grant/Remand/Denial rate by BVA. VBA should be required to break down the statistics by VA Regional Office (VARO). This will not only serve as a tool for veterans to understand the quality of their local VARO, it will also serve as yet another tool that VA can use to determine the quality of their employees by station.

For additional information regarding this testimony, please contact Mr. Ian de Planque at The American Legion's Legislative Division, (202) 861-2700 or ideplanque@legion.org.

[1] http://archive.legion.org/bitstream/handle/123456789/2261/2012N099.pdf?sequence=1



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***STATEMENT OF***
***JOSEPH A. VIOLANTE***
***DAV NATIONAL LEGISLATIVE DIRECTOR***
***BEFORE THE***
***COMMITTEE ON VETERANS' AFFAIRS***
***SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS***
***HOUSE OF REPRESENTATIVES***
***SEPTEMBER 10, 2014***

Chairman Coffman, Ranking Member Kirkpatrick and members of the Subcommittee:

On behalf of DAV, I am pleased to testify this afternoon on ways to improve the processes and outcomes for veterans who appeal incorrect and unfavorable claims decisions. In particular, the Subcommittee today is focused on the Board of Veterans' Appeals (BVA or the "Board") and I am pleased to discuss ways to improve its operations for the benefit of veterans and other appellants.

As the nation's largest veterans service organization (VSO) comprised completely of wartime disabled veterans, DAV is leading the way in providing free assistance to veterans and their families in filing both claims for benefits as well as appeals. In 100 offices throughout the United States and in Puerto Rico, DAV employs a corps of approximately 270 National Service Officers (NSOs) and 34 Transition Service Officers (TSOs) who counsel and represent veterans and their families with claims for benefits from VA, DOD and other government agencies. All of our service officers are themselves wartime disabled veterans who have personally gone through the claims system as well as being thoroughly and continually trained on all of the laws, regulations and procedures of VA's claims adjudication system.

For thousands of veterans each year whose claims were not allowed, or who believe their rating or effective dates are not correct, our team of National Appeals Officers (NAOs) also offers free assistance. DAV's NAOs have previously worked as NSOs to gain experience within Regional Offices (ROs) providing claims and appellate assistance at the local level. Our NAOs have the distinct advantage of being at ground level where all appeals arising from regional office determinations ultimately end up. They are highly trained to prepare written briefs and assist veterans and their family members at formal hearings before the Board.

DAV's National Appeals Office has the highest share of the appellate workload at the BVA, representing 13,381 appellants, close to 30% of the Board's inventory. From October 1, 2013 through July 31, 2014, DAV NAOs obtained 4,017 allowances for benefits sought, 6,138 remands for additional evidentiary development and in 2,605 appeals, denials were upheld by the Board based on prior denials adjudicated at the regional office level. Based on our success, demonstrated competency and capabilities, our NAOs are regularly

consulted and included in discussions and initiatives designed to identify practical and innovative solutions for appeals awaiting their turn in line for review before a Veterans Law Judge (VLJ) at the Board.

**Traditional Appeals Process to the Board**

In order for an appeal to arrive at the BVA for consideration before a VLJ, an appellant would have exhausted all appellate remedies made available to them at the regional office level. The Notice of Disagreement (NOD) would have been filed within one year of the rating board decision, a Statement of the Case (SOC) would have been issued, the appellant would have completed a VA Form 9 or equivalent within 60 days of the SOC being issued, the appellant may have elected a hearing before a Board member and when the file is certified as being ready for shipment to the BVA for their review, the case would be routed to BVA. In addition, if the veteran submits additional evidence at any time during the appeal process after the SOC has been issued, the VBA may be required to issue a Supplemental Statement of Case (SSOC). The certification process (Form 8) is VBA's practice of ensuring that all procedures have been followed to avoid a remand before a case is sent to the BVA for review and decision.

Although the length of time varies greatly due to circumstances both within and outside the control of VBA, BVA or the veteran, typically it can take anywhere between two to three years from the time a veteran files an NOD until the time VBA certifies the Form 8 to the Board. From the time the Board receives the Form 8 certification, it can take anywhere from one to two years before a VLJ reviews the appeal and issues their determination, depending on whether there will be a hearing and what manner of hearing is requested. If the appeal is remanded, such as for procedural errors or incomplete evidentiary records, it can add several months or even years to the overall process before reaching finality on all issues pending before the Board.

Currently there are over 300,000 "appeals" of claims decisions (NODs filed) in the system, but only about 40,000 that have been certified to the Board for their review and decision. The others are still at VBA awaiting SOCs, local reviews, hearings, development, and certification or for other reasons. Although VBA has made significant progress in addressing the pending backlog of claims awaiting decisions through its multifaceted transformation initiatives underway, the volume of pending appeals remains a staggering problem that will require the support, cooperation and collaboration of all stakeholders.

**Getting Claims Decisions Right the First Time**

Mr. Chairman, the single most important action that VBA can take to address the backlog of pending appeals is to complete its transformation and reform of the claims process. Quite simply, VBA must perfect a system based on the premise of getting each claim decision right the first time. As the error rate goes down, and as confidence in the claims process increases, the percentage of claimants who go on to become appellants is expected to decrease. However, as VBA increases its productive capacity the number of completed claims increases, so there may still be an overall increase in the number of appeals even if the accuracy rate continues to climb because correct decisions can be appealed when they are unfavorable to the claimant.

Furthermore, the length of time it takes to receive a decision and the content of the decision letter can have an influence on the number of appeals filed. Veterans forced to wait up to a year or longer to get an initial decision are probably less likely to have confidence in that decision, particularly when it's denied, than if their claim was decided within a reasonable timeframe that was promised to them. Similarly, the current format of claims decisions, Simplified Notification Letter (SNL) program, too often contains insufficient information to allow veterans and their representatives to fully understand the rating decision, to be certain what evidence was considered, or to know what reasons and bases were used to reach decisions. Without sufficient understanding or confidence in that decision, veterans and their advocates are more likely to pursue appellant options to ensure they have correct decisions on claims.

While we certainly support the use of rules-based decision support tools to simplify the task of composing decision letters, VBA must not use technological automation if it eliminates essential information or explanations to fully inform veterans in their claims' decisions. Raters should provide detailed, plain English explanations of their decisions not only to better inform veterans (and their representatives) but also to produce better-reasoned and more accurate decisions by the raters themselves, and therefore likely fewer appeals.

**Local Appeals Processes Can Lead to Quicker Decisions**

After a veteran determines that they want to appeal a claims decision, they must notify VBA by filing a timely NOD. Upon receipt of an NOD, VBA will issue what is referred to as an Appeals Election Letter (AEL). This letter, along with requesting information relative to the availability of additional medical evidence, will ask the veteran or their representative to choose between two separate appellate review processes that determine the type of the review the appeal will undergo.

For less controversial issues, where there may be a lack of merit or lack of available evidence, the traditional appeal review process may be recommended but other times the Decision Review Officer (DRO) post determination review process will be recommended. The DRO process can often be the more comprehensive and effective means to resolve appellate-related disputes at the local level.

The importance of the DRO review process cannot be overstated since a DRO has "de novo" authority, meaning they review the entire appeal—the entire case file—with no deference given to the rating board decision being contested. A DRO can overturn or uphold a previous decision on any issue, request or facilitate a hearing to gather additional evidence, or perform any administrative function available to VBA to assemble additional evidence necessary to make a well informed decision, including ordering any medical examinations deemed appropriate. Many times a procedural course of action can be guided by the recommendations of the veteran's advocate, working in conjunction with a DRO to provide the appellant with best possible outcome on the issue(s) under appellate consideration. A DRO has essentially the same administrative authority as that of a Veterans Law Judge presiding on behalf the BVA.

It is important to note that having the ability to resolve appeals at the local level can lead to awarding benefits sought earlier in the appeals process, rather than requiring review

by the BVA, a process that can take years. In addition, even if a DRO is unable to grant the benefit sought on appeal, any additional development work performed during that review could have the effect of limiting the need for the BVA to perform similar administrative actions and potentially shorten the time required to produce a decision. The local review process also can reduce potential remands that would otherwise have been made by a VLJ.

Mr. Chairman, over the years, DAV and other VSOs have continually voiced concerns to VBA and Congress regarding the erosion of the DRO program. The number of DROs around the country is insufficient for the amount of DRO work generated in regional offices. More concerning is the assignment of normal claims processing work to DROs at numerous regional offices for some or all of their time. While the tremendous focus and efforts aimed at eliminating the pending backlog of claims is understandable, having DROs perform claims processing work when there is more than enough appeals work pending is merely shifting the weight of the backlog from one area to another. We recognize that VBA is under tremendous pressure from both within and without to end the backlog by 2015, but it does not benefit veterans generally if the front end of the process is upgraded while the back end is being degraded.

While we have been told that VBA leadership has sought to limit or eliminate the use of DROs to perform claims work, our observations indicate it continues in a significant number of regional offices. Just a couple of months ago, DAV asked our NSO Supervisors to report whether, when and how often the DROs in their regional offices performed claims processing work rather than appeals work. More than half said DROs were working on claims during regular business hours and over two-thirds said DROs did claims work on overtime. Importantly, over two-thirds of those who said their DROs were working on claims said that it had a negative effect on the RO's local appeals resolution and certification to the Board. I would also note that our NSO Supervisors said that in their opinion when DROs were doing appeals work, the DRO process at their RO functioned effectively and was helpful in resolving appeals locally, underlying our strong support for this program.

While we understand that ROs have limited resources but not limited claims, it is imperative that VBA ensure that the DROs focus solely on appeals work. If additional personnel are required to process pending and future claims work in a timely manner, ROs and VBA must request additional resources, not repurpose DROs.

**Sufficient Resources at the Board**

Unquestionably the availability of sufficient resources, primarily staffing, is one of the most critical factors affecting the length of time it takes to properly process and decide an appeal. More attorneys can review more appeals, and more VLJs can issue more decisions. Based on historical trends, the number of new appeals that go to the BVA has consistently averaged approximately 5 percent of all claims received, even as error rates have risen and fallen over the years. As referenced above, some number of veterans who receive unfavorable decisions will appeal them regardless of the accuracy or quality of their claims decision, and therefore the number of appeals sent to the Board is expected to continue rising in the future.

Over the past couple of years, BVA has made significant increases to its staffing levels, though not necessarily sufficient to match increased workload. BVA had been

authorized to have up to 544 full-time employee equivalents (FTEE) in FY 2011, but its appropriated budget could support only 532 FTEEs; in FY 2012 that number was further reduced to 510. However, since then, Congress boosted BVA's appropriations to allow for staffing to increase by more than 25%, topping 650 FTEE this year. It will take some time for new attorneys to be fully trained and integrated, but the Board expects to set records for productivity this year to match its increased personnel size. One issue that still remains unresolved is how BVA will provide adequate work space for all of its newly hired staff.

**New Initiatives to Improve the Appeals Process**

**"Rocket Docket"**

While expanded resources are increasing productivity, BVA is also exploring ways to increase efficiency, such as the initiative known as the "Rocket Docket," which operated from November 2013 through May 2014. BVA's "Rocket Docket" initiative was an effort to avoid having appeals languish for years before finally being reviewed at the Board, only to be remanded for reasons that could have been anticipated if the file had been briefly reviewed earlier in the appellate process.

Under the "Rocket Docket" program, cases that met certain criteria were screened outside of their normal docket order, their place in the standard line, in order to see if they would ultimately be remanded once their normal docket date was reached. This process permitted BVA to order additional development earlier in the process, thereby allowing quicker outcomes for veterans, while maintaining the original docket order for each appeal.

"Rocket Docket" remands for additional development of evidence could follow one of three main paths, each of which could be beneficial for veterans. First, after procuring the additional evidence, the Appeals Management Center (AMC) or RO could issue a new and a favorable decision for the veteran, which could be months or even years sooner than a Board decision. Second, the AMC or RO could complete the remand-ordered development prior to the docket date of the appeal, thus preventing further delays that would have been necessitated if the remand occurred at that time. This also would save the veteran time in receiving a Board decision. Third, even if the AMC or RO did not complete the required development by the scheduled docket date, they would still be further ahead in that development work than if they waited for the remand on that date.

During the "Rocket Docket" initiative, BVA would identify cases that met the screening criteria and refer them to the DAV National Appeals Office. Although BVA made preliminary determinations that a case may be remanded, DAV National Appeals Officers nevertheless examined the case and provided written arguments either seeking a decision on the appeal without remand based on the merits of the appeal, or entered an argument to support a remand for necessary development when deemed appropriate as the best means to ensure a fair, adequate and well-reasoned decision.

Overall, the "Rocket Docket" appears to have been a benefit for veterans. BVA estimates that out of approximately 4,700 appeals screened by Board attorneys during the seven months of this program, approximately 1,100 appeals meeting the "Rocket Docket" criteria were remanded. Of those, roughly 300 appeals were ultimately resolved at the local level eliminating return to and additional review by the Board. The other approximately 800

appeals were returned to the Board and await their regularly scheduled docket date, but they are more fully developed and less likely to require further remand.

One other effect of the "Rocket Docket" program would appear to be a reduction of some of BVA's metrics for appeals waiting and resolution times, since appeals are taken off BVA's clock when remanded back to VBA, only to start a new clock once returned. Since at least some veterans actually received decisions on their appeals more quickly through local resolution, such reductions in time measures are at least partially legitimate, though such measures only tell part of the story. One concern that we would have is if BVA misused the "Rocket Docket" to remand appeals that had sufficient evidence for an allowance, despite potentially missing evidence or procedural omissions. However, since only about 22% of appeals screened under the "Rocket Docket" program were remanded, compared to almost 45% of appeals that are generally remanded, we have not seen any evidence that such misuse of remands occurred in this initiative.

**"Fully Developed Appeals"**

Mr. Chairman, for a number of months, a group of leading VSOs—which includes DAV, The American Legion, Veterans of Foreign Wars, AMVETS, Vietnam Veterans of America and Paralyzed Veterans of America—has been discussing potential new initiatives that could help improve the appeals process and outcomes for veterans. During this time we have had frequent discussions with leaders at the Board and at VBA as we have worked to reach consensus among the various stakeholders on proposals that could help veterans get quicker and more accurate decisions, while also reducing the workload and burden on the Board and VBA's AMC and regional offices. After multiple discussions and consultations, we have found consensus around a proposal modeled after the fully developed claims (FDC) program.

This new proposal, which we are calling the "fully developed appeals" (FDA) program, is built upon the same general construct as the FDC program: require the veteran (or appellant in our proposal) to assume responsibility for gathering all private evidence necessary for the appeal; eliminate some steps and work required by VBA and the Board; and in return provide the veteran a significantly quicker decision with no diminution in the quality or accuracy of that decision.

As discussed above, a claimant currently has two basic options to appeal an unfavorable claims decision: traditional appeal to the Board or DRO review. The FDA would become a third option that the claimant could choose during the NOD phase. An FDA could be elected at any time during the one-year period in which they have to file an NOD. When the veteran makes the FDA election, they would be required to submit any and all additional evidence they want considered as part of their appeal and any argument to support their appeal. They would also be required to certify that they have been fully informed about the FDA program, that they understand what they are required to do and not do, what VBA and the Board are required to do and not do, and that they consent to voluntarily filing their appeals in this program.

With this certification, the veteran's claims decision and complete file—supplemented by any new evidence or argument submitted by the veteran or their representative at the filing of the FDA—would be transmitted directly to Board and placed on a specially created FDA

docket for date-ordered review and decision after any additional argument submitted by the claimant's representative at the Board. Unlike the traditional appeal process, there would be no SOC created and issued, no Form 9 to complete, no local RO hearings or reviews, no Board hearings, no SSOCs, and no Form 8 certification process. The elimination of these steps alone could save two to three years of processing at the RO compared to a traditional appeals process. Once the FDA is received at the Board it will be routed to the appropriate VSO representative at the Board, if any, for their review and any additional comment, in the same manner as appeals being advanced on the docket.

Similar to the FDC program, the FDA program would require the veteran to certify that there is no additional private evidence relevant to the appeal under consideration and that if the veteran later submitted additional evidence after the date of filing, the appeal would be kicked out of the FDA program and returned to the traditional appeals process. The veteran could also withdraw the appeal from the FDA process at any time for any reason. The Board, however, would still be required to develop for any federal evidence, exams or independent medical evaluations determined necessary for the Board to make their decision. This same general principle of federal development is central to the FDC program as well.

It is important that the FDA program be a time-limited pilot program in order to provide Congress and stakeholders the ability to oversee the program's design, implementation and operation. It must be authorized by statute and contain sufficient details about the critical elements of the proposal to ensure that veterans rights are fully protected.

It is also important to understand that this proposal is not a "magic bullet" that will eliminate the backlog of pending appeals; it is designed to be another option—one of many for veterans seeking to overturn an incorrect or unfavorable claims decision. As discussed above, VSOs continue to strongly support the DRO process; the FDA program is neither a substitute nor replacement for it. It is our expectation that each individual veteran and their representative, if any, will consider this and all other options to determine the most effective and timely process to resolve their appeals.

Mr. Chairman, there are still details of this proposal that will need to be fully flushed out and considered, but that can only occur as legislative language is drafted and reviewed by all stakeholders in this process. To accomplish this, we have reached out to the Committee staffs of the Chairmen and Ranking Members in both the House and the Senate and hope to work collaboratively with all stakeholders as quickly as possible to move this process forward. Although we have not formally received any opinion on this proposal, based on the extensive conversations we have had with leaders at both VBA and the Board, we expect they will be supportive of this proposal.

I also want to note that in developing this proposal we greatly benefited from the work done by Congressmen Beto O'Rourke and Paul Cook -- both members of the VA Committee and both sponsors of H.R. 4616, the Express Appeals Act. Although we did not build or base our proposal solely on that legislation, and there are differences that are important to us, the FDA proposal was informed by their work and strengthened by conversations with their staffs, as well as with the staffs of both Committees.

**Focus on Outcomes for Veterans, Not Metrics for BVA**

Finally, Mr. Chairman, in evaluating and reviewing the appeals process, it is imperative that we remain focused on outcomes for veterans, not just metrics for the Board, VBA and their employees. There is an expression popularized by Mark Twain that best illustrates the danger of relying solely on numerical metrics for substantive evaluations. Twain said that, "there are three kinds of lies: lies, damned lies and statistics."

Any data can be arranged or interpreted in many ways, depending on the purpose, experience and expertise of the individual reporting it. When the measure of a program's success is limited only to easily quantifiable data and metrics, the true purpose of the program can easily be lost behind a flurry of activities to achieve required numerical goals. Unfortunately, this is exactly what happened in the VA health care waiting times crisis, as the metric of "waiting times' became the goal, instead of the true purpose of ensuring the best health care outcomes for veterans. With this in mind, it is imperative that neither VBA nor the Board be evaluated only by measures of waiting times, cycle times, backlogs or other productivity metrics. Furthermore, It is essential that the entire claims and appeal process be considered in any evaluation, since all parts either contribute or influence the final decisions for veterans. In the end, the only outcome that truly matters is whether and how quickly a veteran can be awarded all the benefits that he or she has earned through their service and sacrifice to this nation.

Mr. Chairman, that completes my testimony and I would be happy to respond to any questions you or the Committee many have.

**STATEMENT OF**

**LAURA H. ESKENAZI**
**EXECUTIVE IN CHARGE /**
**VICE CHAIRMAN**
**BOARD OF VETERANS' APPEALS**
**DEPARTMENT OF VETERANS AFFAIRS**

**BEFORE THE**

**HOUSE COMMITTEE ON VETERANS' AFFAIRS**
**SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS**

**September 10, 2014**

Chairman Coffman, Ranking Member Kirkpatrick, and Subcommittee Members, thank you for providing me the opportunity to discuss the Board of Veterans' Appeals' commitment to providing all Veterans, their families, and Survivors with timely and accurate decisions on their appeals and ensuring the integrity of the data that we use to measure our workload and effectiveness in carrying out our mission.

The Board of Veterans' Appeals' (Board) mission has remained unchanged since the Board was first established in 1933 – that is, to conduct hearings and adjudicate appeals properly before the Board in a timely manner. The Board's jurisdiction extends to all questions in a matter involving a decision by the Secretary under a law that affects a provision of benefits by the Secretary to Veterans, their dependents, or their Survivors. Final decisions on such appeals are made by the Board based on the entire record in the proceeding and upon consideration of all evidence and applicable provisions of law and regulation.

The VA appeals process is unique from other standard appeals processes across Federal and judicial systems. It has multiple steps of de novo review with a continuous open record, such that a Veteran, Survivor, or other Appellant can submit new evidence or make new arguments at any time. As a result, an appeal does not simply progress from start to end, but may involve many cycles of additional

development and adjudication as the evidentiary record and the theories of entitlement evolve.

Appeals are initiated at the Agency of Original Jurisdiction (AOJ), and nearly all (approximately 96 percent) appeals considered by the Board arise out of claims for disability compensation that were decided by the Veterans Benefits Administration (VBA). In Fiscal Year (FY) 2013, approximately 10 percent of initial VBA claims decisions were appealed (i.e., 118,053 Notices of Disagreement (NOD) received at VBA), and 4.5 percent of these appeals (i.e., 52,860 appeals received and docketed at the Board) continued through all the initial appeals processes and were certified and transferred to the Board for adjudication.

The VA appeals process divides responsibility between VBA and the Board. The current process provides Appellants with multiple reviews in VBA and one or more at the Board depending upon the submission of new evidence or whether the Board determines that it is necessary to remand the matter to VBA. In addition to the VA appeals process, claimants have had the right to judicial review of VA's decisions on their claims since 1988. If an Appellant is dissatisfied with a final Board decision on a claim, the Appellant may appeal to the United States Court of Appeals for Veterans Claims (CAVC) within 120 days of the date of the decision. Further, limited review is available in the United States Court of Appeals for the Federal Circuit and United States Supreme Court. The 1988 legislation placed judicial review on top of the multiple layers of the VA appeals process that had evolved since World War I.

The Board is required by law to consider and decide appeals in docket order, with some exceptions including: hardship, advanced age, serious illness, CAVC remands. The Board is permitted to screen cases for the adequacy of the record for decisional purposes and may order development in those cases, irrespective of docket order. Since 1994, the Board has assigned a docket date (i.e., a place in line) commensurate with the date that a substantive appeal (such as a VA Form 9) is filed at the AOJ level, typically a VBA regional office (RO), in order to ensure that all Appellants

are treated fairly in docket order assignment regardless of the workflow at a particular RO. This means that when the Board receives an appeal (either a paper claim folder or a virtual case) a docket number is assigned that matches the date that the appeal was formalized at VBA as opposed to the date that the appeal arrived at the Board. Additionally, when the Board remands cases for additional evidentiary development, they retain the same docket number (i.e., place in line) if they return to the Board. Finally, if a hearing is held on the appeal, the Veterans Law Judge (VLJ) who held the hearing must participate in the final determination, by law. Thus, docket management at the Board is a complex, non-linear process, to ensure compliance with the above legal requirements and fairness for waiting Veterans.

In FY 2014, the Board continues to issue high-quality decisions and conduct hearings in appeals. We are continuing to seek and implement innovative ways to improve business processes through a variety of pilot programs and technological advancements. In the past 18 months, the Board underwent an unprecedented period of growth in staff size, having hired approximately 200 new staff during that timeframe, growing the organization from 514 FTE in April 2014 to 663 FTE FYTD (a 29% increase in staffing levels). This significant growth necessitated implementation of new hiring and innovative training programs. Such programs have proven successful as the Board is on track to increase its decisional output by 30% in FY 2014, as compared to FY 2013. The Board also continues to work with stakeholders, such as Veterans Service Organization (VSO) representatives, on ideas to streamline the VA appeals process.

Fiscal year-to-date, the Board has adjudicated over 50,000 appeals for waiting Veterans and their families, which is a record-breaking number since the advent of judicial review in 1989. Additionally, the Board's 64 VLJs (which includes 10 supervising VLJs) personally interacted with over 11,000 Veterans by holding hearings, either held face-to-face at a VA facility, in-person at the Board's offices, or through video teleconference (VTC) between the Board and a VA facility. Most VLJs have traveled to at least two ROs to conduct one week of hearings at each site (known

as "Travel Board" hearings), in addition to holding a large number of VTC hearings and Central Office hearings.

Although the Board still primarily works in a paper environment, the proportion of fully electronic (virtual) cases in the Veterans Benefits Management System (VBMS) pending Board disposition continues to increase. As VBA completes an increasing number of claims each year, the Board expects to receive an increase in appeals proportionate to VBA's higher output in claims decisions.

The Board continues to leverage technology where possible in order to gain efficiencies in case processing. In particular, the Board initiated and implemented a program to schedule Board hearings by use of a virtual docket, digitize the resulting hearing transcripts rather than manage them in paper form, and, working with VSOs, digitize informal hearing presentations, which are written arguments submitted by VSOs on behalf of Appellants. These changes help prepare the Board for working in a virtual environment, as VA proceeds with its Department-wide transformation to a fully electronic claims/appeals adjudication system. Further, the Board maintains its presence on eBenefits – a joint venture between VA and the Department of Defense, which provides Veterans the opportunity to check the status of their claims and appeals securely online or from their mobile device.

The Board continues to focus on methods to increase the quality of the decisions rendered while maintaining a high level of decision output. The Board's Training Office created targeted training for all employees based, in part, on trends gleaned from the Board's quality review process, as well as on outcomes in cases heard before the CAVC and the Federal Circuit. In addition, the Board continues to offer medical training for its staff to address the complexity of disability compensation appeals, and devoted extensive efforts in assisting the Veterans Health Administration's Office of Disability and Medical Assessment in working to improve the compensation and pension examination process in order to improve the quality of examination reports.

The Board continues to challenge its employees to maintain high levels of quality, and through these efforts maintains an accuracy rate of over 94 percent this fiscal year. The Board's accuracy rate (i.e., the Board's deficiency-free rate) quantifies substantive factual and legal deficiencies in all decisions, whether an allowance, a remand, or a denial. To determine its accuracy rate, the Board uses a weighted formula that was created in collaboration with the U.S. Government Accountability Office (GAO) in 2002 and 2005. Any quality deficiencies identified during the quality review process are addressed through appropriate follow-up training for VLJs and attorneys.

The Board is committed to leveraging efficiencies in its business processes to better serve Veterans and their families. In FY 2014, the Board began to implement various business process improvements to meet the anticipated rise in incoming workload. Specifically, Board leadership actively encouraged shorter, more focused decision-writing. More streamlined work products allow the Board to adjudicate appeals in a more efficient manner.

The Board has also leveraged its statutory authority (38 United States Code § 7107(f)) to implement an appeals screening initiative to review appeals so that cases requiring additional development can be quickly returned to the VBA for processing. By law, the Board is required to decide appeals in docket order, but may screen appeals to assess the adequacy of the record and information provided. This screening process (known as "Rocket Docket") can save wait time for the small number of Veterans who met requirements for this pilot program. The Board will collect and analyze data to refine its appeals screening processes to ensure that this initiative dovetails with the Board's mission of issuing quality final appeals decisions to Veterans and their families in a timely fashion.

VA recognizes that under the framework established by current law, Veterans are waiting too long for final resolution of appeals. VA cannot fully transform the appeals process without stakeholder support. VA will continue to work with Congress and other

stakeholders, to include continuing a strong partnership with VSOs, to explore long-term solutions that provide Veterans the timely appeals process that they deserve.

This concludes my testimony. I would be happy to address any questions from the Committee.



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