Supporting Disabled Veterans: The State of Claims Processing During and After COVID-19

May 12, 2021

Statement of

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Before The

United States Senate
Committee on Veterans' Affairs

With Respect To

Supporting Disabled Veterans:
The State of Claims Processing During and After COVID-19

Washington, D.C.

Chairman Tester, Ranking Member Moran, and members of the committee, on behalf of the men and women of the Veterans of Foreign Wars of the United States (VFW) and its Auxiliary, thank you for the opportunity to provide the VFW's insight on the state of disability claims processing at the Department of Veterans Affairs (VA).

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To the VFW, this hearing is a timely opportunity to discuss persistent challenges for veterans in the disability claims process, to discuss lessons learned due to the COVID-19 pandemic, and introduce ideas on ways to better serve our veterans moving forward. This pandemic has had a devastating effect on many aspects of American life. VA was forced to make difficult decisions on how to handle VA disability claims, and those of us who advocate for veterans were forced to adapt and overcome unprecedented challenges to ensure veterans continued to have access to the benefits they earned.

The VFW is proud that our global network was able to leverage resources offered by VA and technology to ensure that our advocates continued to provide quality representation to veterans throughout the COVID-19 pandemic. In 2015, the VFW set in motion a strategic objective to be able to provide real time benefits assistance to veterans from any reliable internet connection. Working with VA, we were able to outfit most of the VFW's service officers with critical hardware and VA network credentials in December 2019 in an effort to meet this objective. Three short months later, this effort proved critical when VA was forced to shutter nearly all of its regional offices, pausing face-to-face contact for veterans.

VA should be commended for many of its modernization efforts over the years in converting its paper-based disability claims process to a computer-based system. However, in this effort the VFW recognizes that there are hurdles that VA must overcome with its partners to build a truly digital solution to the VA disability claims process. The COVID-19 pandemic shined a light on many of these hurdles, such as antiquated IT badge and credentialing processes, rigid standard form requirements, and outdated processing rules. Under the leadership of VA Secretary Denis McDonough, we have seen the Veterans Benefits Administration (VBA) come back to the table to try to address some of these hurdles, but the situation demands that all stakeholders take a critical look at the process and work quickly to address systemic shortcomings.

First, VA, Congress, and Veterans Service Organization (VSO) stakeholders need to come together to have a real discussion on what success looks like in the VA disability claims process. When the VFW considers this process, we are very concerned that VA is not correctly defining or measuring success.

For years, VSOs have insisted that VA provide veterans with timely access to benefits. However, it seems as though VA has interpreted "timely access to benefits" to mean receiving a speedy rating decision or notification. This is not what we intended or what

veterans expect.

When we say timely access to benefits, we mean that VA should have the capability to deliver the benefits that veterans deserve in a favorable or useful timeframe. While there is an element of speed to ensuring the timely delivery of benefits, we must not conflate speed with timeliness. Timeliness implies accuracy, otherwise the decision or notification is not useful to the veteran. We must also not conflate delivery of benefits with receipt of a rating decision or notification. If the decision or notification does not accurately confer the benefits to which the veteran is entitled, it is not useful to the veteran.

Nevertheless, since VA Secretary Eric Shinseki set a goal of processing disability claims in 125 days, VA has seemed obsessed with matching its measured deliverables to this arbitrary timeline. In lieu of focusing on the timely delivery of benefits, VA is measuring itself based on the speed of its decision-making and notification. While the VFW understands that VBA must find ways to measure itself and demonstrate success, we have persistently seen problems with what this interpretation means.

Speed in decision-making is only part of the equation for the timely delivery of benefits. Speed can be corrected by hiring more staff. However, accuracy is the most critical component and must remain paramount to the claims process. Speed without accuracy only results in further delays to the timely delivery of benefits.

Tragically, the VFW believes that VA's pursuit of speed has led to worse outcomes for veterans and unnecessary delays in the timely delivery of benefits. To illustrate this, the VFW must only look back to the Decision-Ready Claims (DRC) pilot program in 2016 and the decision to eliminate VSO pre-decisional rating review in 2020.

The DRC pilot was a well-intentioned program designed to give veterans more authority over the development and processing of disability claims if they chose to work with an accredited veteran service officer. The hypothesis was that if veterans worked with an accredited veteran service officer, they would file an Intent to File (ITF) to preserve an early effective date, procure medical records, develop lay evidence, schedule and complete exams, then formally file a VA benefit claim that was ready for VA to evaluate and rate. VA

proposed that this development could easily cut down processing times to less than 30 days. The issue with the pilot program, however, was that it focused entirely too much on the speed with which veterans would receive decisions from the time they formally submitted a claim while neglecting the weeks and months of development required to file a claim that would be Decision-Ready. However, at the time VA was seemingly unconcerned about development time and solely concerned with satisfying the 30-day speed requirement in an effort to satisfy the overall 125-day requirement for all claims processing.

Veteran service officers were left to explain to disappointed veterans what their 30-day claims actually entailed. Some of our representatives had to endure angry clients who did not understand why we could not get them their benefits in 30 days or less. After recognizing the deficiencies in the program, VBA rightfully sunset the program in 2017. Nevertheless, the VFW recognizes that DRC did bring to light certain pain points in the disability claims process, and clarified the difference between what VA and veterans believe demonstrates success. VA was clearly measuring itself on whether or not veterans received speedy notifications or rating decisions. Veterans were evaluating the experience by whether or not they received the benefits they deserved in a timely manner.

Based on lessons learned from DRC, the VFW now asks whether veterans should rightfully have more authority over the scheduling of their required Compensation and Pension (C&P) exams? Today, VA holds itself to the standard that C&P exams have to be completed within the 125-day target. This may work for many veterans, but veterans dealing with multiple chronic health conditions may need more time and flexibility to complete their exams. Veterans commonly report to the VFW that they are often given little notification they will be required to attend multiple exams, often involving long drives or unreasonable timeframes in which to complete them. This creates stress for the veteran and starts to build resentment for the VA benefits system. We can fix this and offer a better experience to the veteran.

VA should consider offering veterans the option to either have VA schedule exams on VA's timeline, or have veterans schedule and complete their exams within a specified time after filing a claim. VA could easily measure these different timeframes to better reflect processing efficiency as well as overall veteran experience.

Next, in 2020 VBA arbitrarily decided to eliminate pre-decisional review of rating decisions

for accredited veteran service officers––a policy that had been afforded to accredited veteran service officers since the 1950s. The primary rationale behind the elimination of the review period was again based on the premise that veterans want speedy decisions and that VA could not delay notifications by two business days. VSOs at the time argued that we would defend the two business days to any of our clients to ensure they received accurate benefit decisions. Otherwise, the veteran would face a lengthy review or appeal process that would further delay the timely delivery of benefits. This argument did not resonate with the leadership of VBA, and we were forced to seek both litigation and legislative remedy to stop it.

This year, new VBA leadership came to the table with VSOs to discuss our intersecting interests to build the Claims Accuracy Review pilot program. The VFW is optimistic that this program may provide a roadmap for improved notifications and expedited review processes for accredited veteran service officers. However, we are concerned that VA remains fixated on the speed with which it can render decisions and notifications, touting that many times it can render a decision within hours of receiving exams and medical evidence. We applaud the capability that VA has, but we question the manner in which this capability is utilized and its overall effect on the timely delivery of benefits.

The VFW saw how this capability can delay the timely delivery of benefits when working with a veteran recently who was filing for secondary disabilities related to the natural progression of service-connected diabetes mellitus. The veteran filed for secondary peripheral neuropathy of the upper and lower extremities in June 2020 after his VA doctor diagnosed him with diabetic nerve pain and numbness.

Eight calendar days later, we found that VA had uploaded his VA treatment records into the Veterans Benefits Management System, but labeled the claim as “Ready For Decision” without ordering exams. I asked a colleague to take a look at the file, but only a few short minutes later VA had already promulgated a denial of service connection based on an Acceptable Clinical Evidence evaluation of a diabetic exam from 2019.

The VFW was able to reopen the claim based on the erroneous reading of the evidence, which demonstrated that neuropathy set in within the last six months. We believe that the regional office considered this a clear and unmistakable error, which allowed the decision to be reopened.

Fast forward to October 2020 when VA ordered an appropriate exam, the veteran completed the exam, and the VFW again reviewed the claim file. Our reading of the exam indicated that the veteran would receive service connection and a combined 100 percent rating for all conditions.

However, again, VA rendered a decision within hours of receiving the exam report, misapplied regulations and granted the veteran only a combined 90 percent rating. We again tried to point to the error, but this time the VA regional office insisted that we file a formal claim review option. We selected Higher Level Review in early November, noting that VBA misread the exam report and flipped the ratings that it should have assigned, per the regulations.

VA did not properly rate the claim until March 2021. By VA's assessment, this veteran received three decision notifications, each of which met or exceeded VA's requirement for speedy processing with an average time of about 90 days for each claim action. However, the veteran waited more than eight months to receive an accurate decision. Moreover, the accurate decision was not issued until a new calendar year, which means the veteran likely forfeited earned state and municipal benefits that would have taken effect with his higher evaluation rating. The VFW does not consider this timely delivery of benefits.

The interest of VSOs in pre-decisional review was to make sure veterans receive the benefits they have earned the first time around. Though VA can report that multiple speedy decisions look like success, this really creates more stress and resentment for the veteran by delaying timely access to benefits.

We have seen numerous examples of how VA sacrifices quality for speed over the years in an effort to satisfy its 125-day goal. We have heard from VA employees who are equally concerned about burnout and sloppy work when seeking to meet arbitrary speed quotas.

Meanwhile, the VFW is unaware of any VA data that speaks to overall customer perceptions of the VA disability claims process. The VFW collects our own data from the veterans we serve who recently transitioned out of the military, which demonstrates to us that VA needs to have a real conversation on what success means to the veterans' community. We

speculate that the stress and resentment created during the disability claims process may make veterans less likely to access other benefit programs, like VA health care, but we need to know for sure.

This discussion is critical to better understanding how veterans engage with VA and why they may or may not choose to access certain benefit programs. For years, VA has struggled to move the needle on veteran suicide. Meanwhile, VA's own research demonstrates that often social determinants of health can be predictive or protective factors against suicide.

Though the Veterans Health Administration (VHA) has worked to understand this epidemic and provide resources to veterans before critical mental health emergencies, the veterans' community is concerned that this has been pigeonholed as only a veterans' health problem. VA must take a "Whole VA" approach to veteran suicide so we can better understand both risk factors and protective factors for veterans. Part of this picture is understanding how veterans interact with VBA and its programs.

Sadly, when VA publishes its annual suicide prevention report, the data capture only veterans who engaged with the VHA within the last year. The VSOs know that VA has more at its disposal, especially since VA's own research demonstrates that social determinants of health are often better predictors of suicide than a diagnosed mental health condition.

We must work together to break down silos within VA so that we can learn whether programs like disability compensation, vocational rehabilitation, or the G.I. Bill are protective factors against suicide. Moreover, this approach could help VA reach veterans who are not under VA care, or who may not be aware of other benefit programs that could mitigate risk factors for suicide.

Under the last Administration, VA created or updated dozens of claims forms used at different phases in the VA disability claims process. In many instances, the Secretary exercised his authority to require these new standard forms. However, VA electronic systems such as self-service through eBenefits or direct submission capabilities through claims management databases did not keep pace with these changes. As a result, veterans who sought to file certain claim actions through electronic means had their claims for benefits rejected on the technicality that they were not submitted on the correct standard

form, often delaying benefits to veterans.

When the VFW asked VA why it was being so rigid in its paperwork requirements, we were told that the Secretary had the authority to require standard forms. We rejected this notion at the time, pointing VA to its requirement to accept substantially complete applications for benefits. This also led to the epiphany for the VFW that VA had not built an electronic claims system, but rather a paper-based system that just happened to be on a computer.

A glaring example of this deficiency is in VA's interpretation and implementation of the new supplemental claims process authorized under the Appeals Modernization Act (AMA). Shortly before AMA went live in February 2019, the VFW and our partners at Disabled American Veterans (DAV) raised the alarm about scenarios through which veterans could be denied benefits based on our reading of VA's regulations––requiring a standard supplemental claim form, VA Form 21-0995, for all claims that VA considers to be supplemental and barring veterans from preserving the effective date through the ITF process on all claims that VA considered to be supplemental.

The VFW believes that VA is misinterpreting AMA in both instances. First, in negotiating AMA, VA conceded that supplemental claims would be treated like "any other claim." The law reinforces this by only prescribing how supplemental claims would be processed. Second, while it is reasonable for VA to disallow for an ITF while a claim is in the one-year review period, the VSOs believes that denying veterans the ability to preserve an effective date for development purposes for any claim after the review period has expired does not keep with the intent of the ITF process.

When the VFW and DAV raised the issue in February 2019, we were assured by VBA that it would monitor closely. In April of 2019, we started to see examples of veterans having claims closed out for what VA determined to be supplemental claim actions submitted on the wrong forms. To exacerbate this problem, when these claims were closed out, the veterans lost the earliest possible effective dates due to the bar on ITF.

The major VSOs brought this issue to the attention of then-Under Secretary for Benefits Paul Lawrence in June 2020, officially requesting that VBA work with VSOs to resolve both

the standard form and ITF dilemmas. Dr. Lawrence scheduled several meetings to discuss the issue with VSOs and even committed to drafting new regulations to address the ITF issue. However, when the COVID-19 pandemic hit, VBA communicated to the VSOs that it would no longer pursue these new regulations and dismissed our ongoing concerns regarding standard forms.

To date, this remains a problem for veterans seeking to access their earned benefits. Sadly, the VFW has no way of knowing how many veterans have lost benefits as a result of this misinterpretation, which is why we call on VA to publish reports on how many veterans have been affected and to immediately propose regulations to overturn these arbitrary and harmful rules.

Finally, the VFW once again calls upon Congress to work in a bipartisan manner and with stakeholder VSOs to develop a comprehensive solution for toxic exposure. We need a solution that will take care of all veterans from past generations, provide current service men and women the reassurance they will be provided for, and have a system in place to ensure that all future generations of service members receive care and benefits if they face exposures as well.

During the last century, veterans returned home from war with an array of unexplained health conditions and illnesses associated with the toxic exposures and environmental hazards they encountered in service. Today is no different, and toxic exposure has become synonymous with military service. For this reason, it is time for Congress to change the framework through which VA benefits are granted for individuals with conditions associated with toxic exposures and environmental hazards.

In recent hearings before Congress, VA has called for a reprieve from legislation that would ensure delivery of benefits to veterans exposed to dangerous toxins and build a framework to protect generations to come. Veterans do not want a reprieve. We demand reform.

While the VFW understands that the Secretary of Veterans Affairs enjoys certain authorities to grant benefits under many circumstances, we are all too familiar with how inconsistently this authority has been leveraged over time. Even if Secretary McDonough chooses to act on

certain exposures and finds innovative ways to deliver benefits to those who need them, the system still needs to be reformed.

Chairman Tester, Ranking Member Moran, this concludes my testimony. I am prepared to answer any questions you may have. Thank you.