

# Pending Legislation

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Statement of

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Veterans of Foreign Wars to the United States

Before the

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Committee on Veterans' Affairs

Subcommittee on Disability Assistance and Memorial Affairs

With Respect To

**Pending Legislation**

WASHINGTON, D.C.

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Chairman Luttrell, Ranking Member Pappas, and members of the subcommittee, 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 our remarks on legislation pending before this subcommittee.

### **H.R. 1753, Jax Act**

The VFW supports this legislation to ensure that certain members of the armed forces who served in female cultural support teams receive proper credit for such service. A part of our organization's mission is to foster camaraderie among United States veterans of overseas conflicts. This aligns with the goal that the special operations forces had in 2010 when a female cultural support team was implemented to bridge a communication gap that prevented the maximization of strategic objectives during counterinsurgency in Iraq and Afghanistan. However, the Department of Defense 1994 Direct Ground Combat Definition and Assignment Rule created a barrier that would not allow the combat characterization assignment for females. The decision to implement these teams in Iraq and Afghanistan combat operations paved the way for a major change in this rule that integrated females into combat roles.

Today, covered service is not classified as combat service. In some instances, this has a negative impact on the favorable awards of service-connected disability compensation and benefits. This legislation would allow the Department of Veteran Affairs (VA) to treat covered service as combat service and grant service-connected compensation and certain benefits when female veterans who participated in combat operations claim traumatic brain injuries, post-traumatic stress, and disabling physical trauma. It is unjust that the members of female cultural support teams, who facilitated a major change in combat roles, should be denied the full benefits they deserve from their hazardous duty experiences.

### **H.R. 3790, Justice for ALS Veterans Act of 2023**

The VFW supports this legislation. VA considers amyotrophic lateral sclerosis (ALS) a

presumptive service-connected disease and, due to its progressive nature, automatically rates any diagnosed veteran at 100 percent once service connected. If a veteran with service-connected ALS then dies, the surviving spouse is eligible to receive Dependency and Indemnity Compensation (DIC). In cases where a veteran had a VA disability rating of totally disabled with ALS for at least eight full years leading up to death and was married during those same eight years, the surviving spouse is then entitled to an additional monthly payment called the DIC kicker. A surviving spouse should be entitled to the eight-year provision regardless of how long the veteran had ALS. Taking into consideration the full-time care often needed for a person diagnosed with ALS and that the average life expectancy following diagnosis is from two to five years, we see this as an important addition for these survivors.

### **H.R. 4016, Veteran Fraud Reimbursement Act and H.R. 4190, Restoring Benefits to Defrauded Veterans Act**

The VFW supports both bills that seek to restore benefits to veterans and their families who are victims of abuse or fraud by fiduciaries. The Veterans Benefits Administration (VBA) appoints fiduciaries on behalf of veterans who are unable to manage their financial affairs due to injury, disease, age, or other reasons. It also investigates reports of fiduciary misuse of these funds. According to a July 2021 Office of Inspector General (OIG) report, from January 1, 2018, through September 30, 2019, VBA staff initiated approximately 12,000 allegations of misused benefits by fiduciaries.

Historically, VA could make automatic repayments only to veterans defrauded by their fiduciaries in certain cases. A provision within the *Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020* (P.L. 116-315) intended to correct this inequity and allow for automatic reimbursement in all instances of fiduciary fraud. An unintended consequence of this provision was that it created a requirement for VBA to make a negligence determination and for VA to investigate its own culpability in all cases of fiduciary misuse before reissuing payments to the beneficiaries. This has created an unnecessary and time-consuming process as VA's role in the appointment of the fiduciary or its lack of proper oversight does not change the outcome for the veteran.

The OIG report identified significant wait times for beneficiaries and delays in repayments. Of the forty cases reviewed, it took an average of 228 days for VBA to complete the misuse

determinations. Some cases took a year or longer. It also cited that negligence determinations were a key inefficiency in the reimbursement process. VA negligence determinations should never delay veterans from receiving their reimbursements, as this could potentially create significant financial hardship for an already vulnerable population.

Additionally, we support the provision to ensure whenever the Secretary of Veterans Affairs determines repayment of those funds must be issued to the veteran, but the veteran has passed away, the funds would be paid to the veteran's estate. These benefits may be critical for the veteran's surviving spouse, next of kin, or caregiver.

### **H.R. 4306, Michael Lecik Military Firefighters Protection Act**

The VFW supports this proposal to establish presumptions of service connection for diseases associated with firefighting. Many military firefighters report the use of aqueous film-forming foam (AFFF) in firefighting and training operations, and the presence of per- and polyfluoroalkyl substances (PFAS) in bunker gear. Our members who served as military firefighters reported continuous exposure to AFFF during training and face a significant occupational risk due to the health hazards associated with these chemicals.

We have suggestions to expand and improve the language of this legislation so all veterans exposed to these chemicals are provided the care and benefits they have earned. We believe the five-year experience requirement as a firefighter is too long. For these individuals, one exposure alone could cause harm. Additionally, there should not be a time limit for when the veteran can file a claim as many of these conditions manifest years after exposure. This legislation is incredibly important to prevent AFFF/PFAS from becoming another situation, like Blue Water Navy or Camp Lejeune, in which veterans became sick and died waiting decades for their conditions to be properly recognized and appropriately treated.

### **H.R. 5559, Protecting Veterans Claim Options Act**

The VFW supports the intent of H.R. 5559, and thanks Chairman Bost for what he is trying

to achieve with this legislation. Far too many cases submitted in this category are left lingering with a “no decision” classification on Appeals Modernization Act reports. We believe the change of evidence threshold as written is too vague, and we are concerned about the unintended consequence of further adding to the appeals backlog. As VA works to streamline appeals processes and to ensure staff is knowledgeable and trained in the complex areas involved with some appeals, every effort must be made to provide veterans suffering from service-connected disabilities with the compensation they deserve. The retroactive component of this legislation is applauded along with the other aspects that protect veterans as they navigate this daunting process. The VFW is committed to working with Chairman Bost's committee staff to clarify the intent of this bill.

### **Discussion Draft, Veteran Appeals Decision of Clarity Act**

The VFW seeks further explanation on this legislation to amend title 38, United States Code, to improve decisions issued by the Board of Veterans' Appeals (BVA). This seeks to complete the communication from BVA to the veteran, making all aspects of the decision clear. To ensure that the full intent of the legislation is realized, clarification of lines 23-25 is requested with reference to Section 7105 paragraph (1) of subsection (b). Specifically, a notice of disagreement or modern-day appeal to BVA via VA Form 10182 should be addressed prior to docketing of the claim at BVA. Therefore, referencing either after a decision has been made is irrelevant and cannot benefit the veteran. To wait until there is a BVA decision to learn that a notice of disagreement was inadequate or untimely only delays the opportunity for compliance or correction. This legislation should provide the veteran with recourse to address deficiencies in a timely manner prior to a final decision.

### **Discussion Draft, Veteran Appeals Transparency Act of 2023**

The VFW seeks further clarification on this legislation to make certain improvements to the processing of claims for benefits under the laws administered by the Secretary of Veterans Affairs and the transparency of BVA. This amendment is a positive clarifying change that provides guidance in actions that can be taken by the veteran. Although generally understood, this legislation amplifies options along with other resources and aids such as the VA appeals status tool. This calls for weekly publications of expected actions on each docket. The VFW believes that publishing claims that are docketed at BVA is not informative unless supporting information indicates the number of claims being decided

during that period. Monthly publications as opposed to weekly should be considered and may be sufficient. Otherwise, it gives the impression that a much sooner decision is forthcoming. Further, there needs to be education on the fact that this is not a first in, first out process. If clarity reveals that the publishing of claims docketed for decisions each week implies that they *will* receive decisions that week, then it is exceptional and welcomed information to provide the public. These considerations would help fulfill the intent of transparency in this legislation.

### **Discussion Draft, Review Every Veterans Claim Act of 2023**

The VFW supports this legislation to amend title 38, United States Code, to limit the authority of the Secretary of Veterans Affairs to deny the claim of a veteran for benefits on the sole basis of failure to appear for a medical examination. VA has made significant improvements to ensure filing for service-connected disability compensation is easier for veterans. However, one major difficulty that remains is the practice of denying benefits due to a missed medical examination. Veterans miss appointments for many reasons and would benefit from a process that does not place so much emphasis on this aspect. This legislation is a step in the right direction for continued improvements.

The VFW has worked with countless veterans who had to reapply for benefits because they missed examination appointments. Restarting a VA claim simply because of this is burdensome and unnecessary. We recommend that if an appointment is missed, then the file should go back into the queue in a type of hold that can be reactivated later. This would allow the veteran to restart the claim process from that point instead of starting over from the beginning.

### **Discussion Draft, Veterans Exam Expansion Act of 2023**

The VFW supports this bill that amends previous legislation to improve the temporary licensure requirements for contract health professionals who perform medical disability examinations for VA. Veterans deserve the best care possible, but not at the expense of timely service. It is important to develop an examination process that is proficient and well serves veterans with service-connected disabilities. Recent highlights in Government

Accountability Office reports recommend changes that would produce better results with the practice of license portability. With well-developed procedures accompanied by proper oversight and clear guidance on the execution of this practice, the extension of license portability to include psychologist, podiatrist, dentist, or optometrist would be instrumental in the processing of PACT Act claims and all service-connected claims going forward. Recommendations including reporting requirements that measure the success of amendments proposed in this legislation would allow VBA to continue with appointments at a faster rate to the benefit of veterans.

Chairman Luttrell, this concludes my testimony. Again, the VFW thanks you and Ranking Member Pappas for the opportunity to testify on these important issues before this subcommittee. I am prepared to take any questions you or the subcommittee members may have.

### **Information Required by Rule XI2(g)(4) of the House of Representatives**

Pursuant to Rule XI2(g)(4) of the House of Representatives, the VFW has not received any federal grants in Fiscal Year 2023, nor has it received any federal grants in the two previous Fiscal Years.

The VFW has not received payments or contracts from any foreign governments in the current year or preceding two calendar years.