



National Veterans Affairs and Rehabilitation Commission

1608 K Street, N.W. • Washington, D.C. 20006

Michael D. Helm, Chairman - Nebraska

Barry A. Searle, Director - Pennsylvania

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05-10

February 4, 2010

**STATEMENT OF
IAN C. DE PLANQUE, ASSISTANT DIRECTOR
VETERANS AFFAIRS AND REHABILITATION DIVISION
THE AMERICAN LEGION
BEFORE THE
SUBCOMMITTEE ON DISABILITY ASSISTANCE
AND MEMORIAL AFFAIRS OF THE
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
ON
"THE IMPLEMENTATION AND STATUS UPDATE OF THE VETERANS'
BENEFITS IMPROVEMENT ACT OF 2008, PL 110-389"**

FEBRUARY 3, 2010

Mr. Chairman and Members of the Subcommittee:

I appreciate this opportunity to express the views of the 2.4 million members of The American Legion on the ongoing implementation of PL 110-389, the Veterans' Benefits Improvement Act of 2008. When this legislation was passed in 2008, it offered a broad spectrum of benefits to the veterans of America. However, since the enactment of this legislation, the speed with which the Department of Veterans Affairs (VA) has complied with many of its numerous provisions has been disappointing. The efforts of Congress and the citizens of America to improve the situation of veterans seeking their earned benefits from the VA are of little consequence if the VA cannot move swiftly to implement them. This law was enacted on October 10, 2008 and we sit nearly 16 months later with little concrete result. The implementation of this law cannot be considered successful at this time.

This is broad reaching legislation. We were asked to focus on the issues surrounding VA's disability claims processing system as they apply to the Veterans' Benefits Improvement Act of 2008, the effectiveness of compensation and pension benefits-related provisions of that act. My testimony will be limited to those areas under the disability claims processing umbrella we feel in most need of attention. Should the subcommittee feel that further information is needed about any portion of the legislation not considered in this testimony, The American Legion would be happy to provide further response in those areas.

In Fast Letter (FL) 09-15, distributed March 3, 2009, VA laid out their plan for implementing the provisions of this law. Some of the points required little or no action on behalf of VA, such as the extension of provisions already in effect for the authority of performance of medical disability exams by contract physicians, or aspects relating to the Court of Appeals for Veterans Claims, which falls outside of VA purview. Others required studies to be performed, and in many of those cases, we are still waiting to determine the results of those studies.

Important studies take many months or years to bear fruit. This underlines the importance of an early beginning for such studies, in the interest of providing answers to the questions.

Section 213 called for a report on the progress of the Secretary of Veterans Affairs in addressing the findings of a Study of Compensation Payments for Service Connected Disabilities. This report was compiled by Economic Systems, Inc. (Econsys), and provided a variety of policy options to address appropriate levels of disability compensation to be paid to veterans. Compensation for loss of earnings capacity and for loss of quality of life, as well as the feasibility and appropriate level of long term transition payments for veterans undergoing vocational rehabilitation as a result of their service-connected disabilities were researched. VA provided a special forum for comment by Veterans' Service Organizations (VSOs) on January 14, 2009 on this study, published in September 2008.

One of the factors which became apparent in the earnings loss section of this report was that different disabilities rated at the same percentage rate, for example two distinct conditions each assigned a 30 percent rating by the ratings schedule, have differing impacts on level of earnings loss. There is no "one size fits all" for rating disability. This was most apparent in mental disorders, as veterans suffering from a mental disorder often have a greater earnings loss than for a physical disability rated at the same tier percentage. Econsys found that this may require improved accuracy in the ratings schedule to adequately reflect earnings loss for the individual disabilities, but noted the potential problems inherent in such a revision, such as the possible reduction of some rates of disability to make the overall scale more equitable and the concerns among service connected veterans such reductions would bring about.

One of the key areas of interest brought about by the study was the first attempt to devise a system to incorporate quality of life considerations into the ratings schedule. The study provided three possible options. One option simply would implement a Quality of Life (QOL) Benefit with a statutory rate for each combined level of disability. While this is completely objective and would require comparatively little additional effort, it is quite unlikely that all veterans receiving this compensation would be compensated to match their individual degree of QOL. Some veterans would receive overpayment, some would be underpaid. However, the

actual QOL loss of all veterans at a set degree of disability, such as a combined 60 percent rating, would not be equal, and QOL being often subjective to individual cases would not be equitably applied. The American Legion does not consider this a desirable solution.

The second proposed remedy is to individually assess each veteran's claim for individual loss of QOL. While this certainly is targeted to accurately matching loss of QOL to an individual subjective case, this would represent a considerable amount of time and manpower to process this additional component of the claim. The American Legion believes this would be a less than optimal solution.

A third proposed remedy was to provide for the creation of a separate ratings scale geared to QOL loss. The proposal called for this process to have some level of computer automation to enhance timeliness, and would incur additional costs creating a QOL schedule, although it would be more objective and subject to less processing time. The objective nature of such a schedule may also fall short of addressing the individual picture of impairment for specific veterans. However, it could be more tailored than the first proposal to accurately reflect the impact of the facets of QOL loss. The American Legion believes the work involved in setting up such an additional schedule would be great at the outset.

No one system presented was without flaws; however, all of the options in this study, as in similar studies such as the Veterans Benefits Disability Committee (VDBC) and the Advisory Committee on Disability Compensation, underline the inadequacy of the present VA ratings schedule to address issues related to the impact of a disability on the quality of life. VA has made some strides, most notably a recent Mental Health Forum that stated that the reformation of the difficult schedule of ratings for mental health was their priority and represents an important step forward. While aspects of impact on quality of life are not exclusive to mental health, this has been an area often overlooked in the past.

Reports and studies are of little value if we cannot implement the lessons learned from them. It is becoming clear from many of these studies that VA's compensation system is falling short in addressing these aspects of impairment. When considering ratings schedule for mental disorders, VA is directed to consider social and occupational impairment, yet this is currently an area of deficiency and a target for improvement. These studies should increase our awareness of mental disorders and to seek to rectify present deficiencies in that area.

Section 221 called for two pilot programs to be implemented to improve the speed of the claims process. One pilot called for an expedited process for "fully developed claims," the other called for a pilot to assess the feasibility and advisability of providing claimants with a checklist including information and evidence required to substantiate a claim. Both programs represent possible ways of speeding up the claims process, improving clarity of information to veterans and potentially reducing the backlog of claims. Both programs have been initiated, yet no update on the status of these projects has been provided as of this time. In a March 3, 2009 "Fast Letter" (FL), VA stated that the initial report would be due to Congress no later than September 10, 2009, with a second interim report no later than September 10, 2012. As of this writing, we are nearly five months past the first deadline.

Section 101 of this law provides much needed updates for the letters mandated by the Veterans' Claims Assistance Act (VCAA). The VCAA letters have been a point of contention for quite some time. Originally intended to provide veterans with an assessment of the information required to substantiate their claims, the letters are complicated, containing confusing legal language that many veterans have a hard time understanding properly. Section 101 calls for these letters to be made more specific to the types of claims, whether original or reopened, or a claim for an increase in benefits. Furthermore, Section 101 directs these letters to be more appropriate to the type of information specific to those types of claims.

On December 11, 2009, VA published a proposed rule change to implement the revisions. A period of public comment expires on February 9, 2010. The new letter templates are broken down into four distinct subtypes based on the type of claim, as mandated in PL 100-389, and the language has been updated to be clearer and provide examples of the manner in which VA processes claims and the type of information that they require. In this they also include compliance with the recent court decisions of *Dingess/Hartman* and *Vasquez-Flores*. The overall effect shows a continuation of efforts to provide clarity in these letters. Increasing the clarity of direction to veterans in the claims process will help the entire claims process by increasing veteran understanding of the issues involved and reducing unnecessary paperwork with excessive information over and above what is required to substantiate a claim.

Section 106 directed VA to add the condition of osteoporosis to the presumptive list of disabilities for those Prisoners of War (POWs) who are also diagnosed with posttraumatic stress disorder (PTSD). Not only has VA complied with this provision, in a final rule published August 28, 2009, they further extended the presumption of osteoporosis for POWs to any POW who was detained or interred for a period of 30 days or more, regardless of whether or not that POW is diagnosed with PTSD or any other condition. The American Legion is opposed to the 30-day period required for many presumptive disabilities associated with POW status, and continues to call for VA to rescind such 30-day periods. However, we also recognize that VA has reached beyond the initial scope of this presumption as written in the law, and commend them for this extension of benefits above and beyond that which they were directed to do.

Section 211 calls for the addition of temporary ratings for immediately transitioning service members to bridge the gap during the transition time and provide some measure of relief until a more detailed and permanent rating is issued. This would represent an important step in what has been identified recently as one of the most difficult periods in the current wartime climate, the transition process. FL 09-15 stated that 38 C.F.R. §§ 4.28 and 4.129 would be revised to reflect the new statutory language. However, we have yet to see any meaningful movement towards implementing this measure. Perhaps one of the easiest steps which could be taken is the granting of obvious issues in multiple claim cases, with issues that could not be immediately adjudicated deferred to a later time.

VA can then adjudicate claims for which they have the information up front and partially set those veterans on the road to their full eligibility. This would allow VA to take the necessary time towards adjudicating the more complicated issues without penalizing the veteran. Adjudicating one or two applicable issues, while deferring others, would get the veteran a measure of monetary compensation for their disabilities and also increase access to the

affordable health care for those disabilities that can immediately be service-connected. Too often the practice currently is to hold all decisions on claims until every issue can be adjudicated. With multiple issue claims, which are more common with transitioning service members, delays can become quite lengthy. This results in a more frustrating process in the difficult time of transition when aid is needed most.

There has been focus lately on the lengthy claims process. In the veterans' community, there is a perception by some that VA policy is to "delay, and delay until the veteran dies." While this is an unfair perception, the reality exists that many VA claims take so long to process that veterans who suffer from terminal conditions, often do pass away before their claims can be finally adjudicated. In the claims process, this has meant that these claims cease to be processed with the death of the veteran and must be reinitiated by an eligible survivor, thus beginning the whole, lengthy process anew.

Section 212 of this legislation was meant to provide some measure of relief to the families of the veterans in those situations. This section provided for the continuation of the claims by the families of the veterans, in short, the living family member who would have been entitled to the accrued benefits assumes the position of claimant and maintains the claim until it has been finally adjudicated. Many veterans state that among their final wishes is the belief that their families receive the benefits to which they are entitled, and this is precisely what this measure was intended to ensure.

Guidance to the regional offices on how to process these claims prior to the publication of an implementing regulation was issued in FL 09-15, but VA has yet to publish a proposed regulation. The process of publishing a proposed regulation, receiving public comment, and assimilating it into a final regulation is already a lengthy process, yet it has not even begun. Although VA provided internal interim instructions on how to process these claims, the regulation process provides public review and comment to ensure transparency and external involvement in VA's implementation of the statute. Sixteen months without VA publishing a proposed regulation is unacceptable.

Perhaps one of the greatest areas of concern for The American Legion is the implementation of the provisions of Section 226. The American Legion has long argued that the current work credit system in use by the VA contributes substantially to the ongoing backlog of VA claims. In short, the present system gives equal credit to claims properly and improperly adjudicated. The American Legion has maintained that this system places undue weight on quantity over quality. The resulting deficiencies in quality thus lead to an increased number of appeals clogging the system. If a job is done correctly the first time, then the inherent delays in redundant work are eliminated.

Section 226 called for a study of the work credit system to consider better measures to improve accountability, quality of work, and accuracy in processing compensation and pension claims. To date, we have received no updates on the results of any study, or even whether or not such a study is in process. VA's own "Fast Letter" stated that a report would be submitted no later than October 31, 2009.

The American Legion continues to call for the establishment of a work credit system in which credit would only be assigned when a claim has been finally adjudicated. In such a system, the impetus would be to properly adjudicate a claim the first time. By making the decision airtight, credit could be claimed more swiftly for the final claim. VA could point to accurate figures of claims that had been done to the standard of accuracy and with proper legal rights maintained throughout the claim. Though we feel that such a system would be the most beneficial, the main point is that VA's current work measurement has serious flaws and is in desperate need of a major overhaul.

Although not officially endorsed by The American Legion, a recent proposal informally circulated among VSOs called for a "checking account" type system. In such a system, VA would get credit for work when it was completed, at the time it was completed. However, if work is found to be done improperly or inaccurately, then debits would be assigned against that credit. It could be a better rubric that provides more accurate information to interested parties. Where does VA stand on the claims process? Are they "in the red" or "in the black?" There would be easy answers to those questions, plain numbers in black and white. The culture could move away from shuffling papers and counting widgets to quality work. With adherence to strict standards, VA employees could take pride in their ability to keep their offices operating squarely in a positive credit status. VA itself could easily discern where the resources available to improve quality were needed most. Veterans and the groups that advocate on their behalf could see at a glance where the efforts were working most effectively and where more attention would be needed.

Any system different from the current process would require a transition period and would require adjustments. Asking the entire veterans' community to change how it measures the claims process, but change can be a good thing. In this case, change to a more transparent and easy to interpret rubric for the measurement of progress and achievement. The sooner change begins, the sooner a system in which the veterans' community can efficiently participate.

Such a watershed change should not be considered separate from changes already being studied. VA is currently developing many pilot programs with the potential to improve the operating environment to the benefit of veterans involved. In Little Rock, Arkansas, VA is still implementing a pilot program in conjunction with Booz, Allen, and Hamilton to apply "Lean Six Sigma" business practices to the claims process. Representatives of The American Legion and other major VSOs have visited Little Rock at the invitation of VA to examine this pilot program during its initial operation, and the early feedback is positive. In Providence, Rhode Island, VA is piloting a program to operate in an entirely electronic environment. While VSOs have not yet had "eyes on" experience of this program, again early feedback is positive. VA is of course extensively examining the impact and implementation of electronic "paperless" processing of claims.

All of these examinations of aspects of VA operations should not operate in a vacuum. What is essential is that VA must develop an integrated management approach, a holistic composite of all lessons learned from these examinations. There are many great things that VA has done and can continue to do. However, there are also many stumbling blocks from reliance on the old ways of doing things that must be transformed if a truly integrated operating approach is to be

implemented. The American Legion wants to help VA to become the most responsive and beneficial system possible. There are many challenges to such a system, but they are not insurmountable.

VA transformation must go forward. It is not enough for Congress to propose changes and to pass laws which provide for such changes; we must ensure that these changes are followed up on and implemented in a manner that forges VA into the operating entity it is capable of becoming. Congress has worked very hard with the VSOs and America's veterans to investigate this system and determine the most essential areas for reform. VA strives to provide many excellent services and benefits to veterans, but they must not be hampered by a reliance on outdated and inefficient means to deliver these benefits and services. As willing partners in the process, Congress, the veterans' community, and VA must all work together to ensure that this system continues to be what Abraham Lincoln long ago envisioned, an organization endowed by this country "to care for him who shall have borne the battle, and for his widow and his orphan."

The American Legion stands ready to answer any questions of this subcommittee and thanks you again for this opportunity to provide testimony on behalf of our members.