

Is VA Ready for Full Implementation of Appeals Reform

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Statement of

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For the Record

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Committee on Veterans' Affairs

With Respect To

“Is VA Ready for Full Implementation of Appeals Reform?”

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Chairman Roe, Ranking Member Walz, 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, I want to thank you for the opportunity to present the VFW's views on the Department of Veterans Affairs (VA) preparedness to fully implement the *Veterans Appeals Improvement and Modernization Act of 2017*.

As a chief contributor to the development of the Appeals Modernization Act (AMA), the VFW is encouraged by VA's efforts to seek congressional support and include stakeholders at multiple levels. Such collaboration demonstrates VA's willingness and desire to improve the lives of veterans with innovative programs. As we have testified previously, we caution VA to heed the concerns and recommendations of those who represent a collective five million veterans in claims and appeals before VA. Often, the rush to implementation ends up being detrimental to those who are in need the most.

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The process to overhaul appeals was lengthy, and involved disparate ideas and opinions. Negotiations were at times contentious, but it produced a product in which everyone involved has not just a stake but proprietorship. VA, to their credit, took all of these elements into account to make it something of value to help provide more timely benefits to veterans. We are also grateful for VA seeking out veterans service organizations' concerns and expertise in helping to craft the federal regulations that will govern this new, modernized effort.

The VFW is proud to support a new appeals framework that offers veterans more options to resolve benefit disputes in a clear and timely manner. From what we have seen of the test phase of the new appeals framework through the Rapid Appeals Modernization Program, we believe that the system has the ability to work as intended, yielding positive results for veterans. VA should be applauded for deploying such substantial changes so quickly, and the VFW was eager to offer input and honest critiques every step of the way.

The VFW certainly understands the scope of the task at hand, which is why in light of these successes, it is our obligation to call out potential problems in the system, and work constructively with VA and this committee to make sure they are resolved. Our statement today will focus on three such areas: informal conference through Higher Level Review (HLR), development errors at the VA Regional Office (VARO), and information technology (IT) infrastructure.

INFORMAL CONFERENCES

One aspect that concerns the VFW is the well-intended but poorly executed "informal conference" option for HLR claims. The VFW is aware of several instances where VA has made attempts to contact veterans to discuss their issues on appeal. The adjudicator has indicated in the veteran's record that they made "reasonable effort" as required by the legislation. However, the veteran was unavailable and no contact was made other than possibly a voicemail message. In another example, one of our field representatives at the pre-discharge claims site at Joint Base Lewis McCord in Washington was essentially cold-called by Decision Review Officers (DROs) more than once to discuss appeals in which the veteran selected an informal conference. This is a dilemma for both VA and the VFW because of our continued concerns, first of the vague definition of reasonable effort and second, the continued issue of losing local advocacy. Not only is this out of the scope of her responsibilities, but other than an austere electronic record, she has no familiarity with the

appeal or the claimant to even render a notional solution to the issues. At best, she would only be able to advise the proper VFW representative of the attempted contact if she were available to discuss the claim at all based on her location and schedule.

Another example comes from our representatives at the St. Petersburg VA Regional Office, where the DROs repeatedly noted a failure to contact the VFW's accredited representative. When reviewing the noted, the DROs attempted to contact the representative by phone and failed to leave a message to schedule a call.

The VFW's understanding of the informal conference, as presented by VA, is that DROs should be reaching out to the party identified by the veteran on their HLR election to schedule a mutually agreeable time to conduct the conference. We do not see this happening consistently. Instead, we believe that DROs are loosely interpreting a reasonable effort as any effort to contact any accredited representative -- not necessarily the representative identified by the veteran in their election.

We have been assured by VA that this is not the standard for informal conferences, but given the lack of standardization across VA, the VFW called for more specificity in both the final regulations and the standard forms, more clearly defining reasonable effort and providing explicit guidance to how reviewers will contact the veteran's designee to conduct an informal conference.

In cases where we have seen the informal conference completed, we have seen very positive results for veterans. We believe that this interaction is critical to the success of the program in ensuring that claim disputes are resolved at the lowest possible level, but it requires due diligence from VA.

ERRORS AT THE VA REGIONAL OFFICE

Another concern is continued poor development of claims and appeals across VA, as the VFW testified a few weeks ago. Remand is a dirty word for a veteran that has been waiting months for a claims decision and years for an appeal to be heard. The AMA was developed with this in mind. Cases get entrapped in a vicious cycle of legal finger-pointing due to overlooked evidence, developers and raters overstepping their authority, or the general lack of responsibility. Again, as noted in prior testimony, training and supervision lend themselves to this shortcoming.

The VFW recently had a case from the Waco VA Regional Office (VARO) where our client appealed an adverse Higher Level Review decision. Our client was denied service connection for sleep apnea, lumbar strain, and bilateral sciatica. The VARO cited that the claimant's new and relevant evidence had been received and the claim reconsidered. However, the claim was not rerouted through the Supplemental Claim lane, as should have happened through RAMP with the inclusion of new and relevant evidence. VA then denied the claim, citing no link between the conditions and military service, even though the new evidence supported a medical nexus based on treatment during service. The VFW's review of the case confirmed that the newly submitted documents had not been considered, yet the DRO inaccurately decided to uphold the denial. Instead of rendering a decision, our staff at the BVA believes that VA should have at the least ordered new medical exams, since prior exam findings that did not link the conditions to military service were mooted by the new evidence submission. Since the veteran's record changed, VA had a duty to order a new exam. The veteran will still require a new exam -- before the BVA can render a new decision -- which exemplifies the claim churning we sought to avoid by building the new appeals framework.

Since we do not know the experience level of this particular DRO, we cannot resort to conjecture other than to point out a training problem with VA's legally required duty to assist. The VFW can only assume initially that the VARO did not review the complete medical record prior to making a decision that was not in line with the standard operating procedure or M21-1. We can state that in order to afford the veteran the due process he was denied both at the VARO and again by the DRO, VA should have requested a legal medical opinion to determine etiology based on the perceptibly disregarded new and relevant evidence, yet VA saw fit to proffer and offer their own.

While policies have been hashed out and best practices have been developed, the VFW is not entirely convinced that VA is completely ready to implement the new framework based on reports from the field and our Board of Veterans Appeals (BVA) staff. Remanding appeals in an endless cycle due to sloppy work is intrinsically harmful to veterans. The VFW worries that simply implementing the new appeals framework without addressing the broader training shortfalls in VA will only result in more benefit disputes that require readjudication. Our goal is to help VA get it right the first time.

INFORMATION TECHNOLOGY

One of the key provisions of this new law is the requirement that the chairman of the BVA certify to the Secretary that they are fully capable of implementing this new process. The VFW has additional concerns as we approach the new year. While some aspects of the law have been implemented easily, others will pose substantial challenges to BVA and the Appeals Management Office (AMO) such as the development of IT platforms. VA does not need another debacle on its hands associated with poorly developed IT systems. The VA Office of the Inspector General shares this concern with us and noted the VA Office of Information and Technology (VA OI&T) may not have sufficient resources to provide the Veterans Benefits Administration with a more modernized IT solution for claims processing prior to February 2019. BVA has instituted a new appeals management system called Caseflow. We have tested this system and are concerned that it will not be seamlessly integrated with the Veterans Benefits Management System in time for February 2019.

Based on current capabilities, testers have the ability to only track a claim using the new system. BVA staff is still required to use the Veterans Appeals Control and Locator System to complete presentations for submission to a Veterans Law Judge. VFW staff members report they have been told it has been integrated already but we cannot verify that as testers do not yet have the functionality.

Additionally, the VFW has not been told whether or not there will be a pilot phase for verification of the system, beyond the current testing phase. As noted in the *Comprehensive Plan for Processing Legacy Appeals and Implementing the Modernized Appeals System* dated November 2018, this transition is not overseen by BVA or AMO as a result of the AMA, but rather by a more ambitious and wide-ranging IT modernization process. Delays in the ability of Caseflow to be completely and reliably functional will render the main purpose of the act moot until system issues are resolved. Given the past record of VA OI&T results, we can only hope it will not be another instance similar to the system upgrades that affected GI Bill payments this fall.

We are pleased that VBA has been able to hire new full time staff for the implementation of the appeals process. We are also encouraged by the creation of Decision Review Operations Centers conducting HLRs and other critical actions at both the Seattle and St. Petersburg VA Regional Offices. These more than 700 new employees are essential to the efficient, timely and accurate reduction of the legacy appeals backlog. Although this is a wise way of thinking, the VFW once again continues to emphasize the importance of proper training and oversight by the AMO. Presently, VA has developed a fairly comprehensive training curriculum to implement the AMA. The VFW is encouraged by this and urges the committee to continue to provide robust oversight of VAs execution of these critical components of appeals adjudication.

It has been nearly 100 years since the VFW presented our first claims to the federal government for benefits for deserving veterans. The system has changed dramatically since 1919, and the VFW has been proud to be there every step of the way in building veteran-centric benefit programs. However, the VFW knows that changes to programs that were slow to mature last century move far more rapidly today. Training and oversight are key to the success of every VA business line. We have been given powerful tools to make the quality of life for veterans and their families better every day. Appeals modernization and the aggressive timelines it promises are going to be beneficial to many veterans, if they are implemented properly.

The VFW believes that VA is generally on the right track, since it has worked directly with stakeholders every step of the way to improve the process. However, VA still has some significant items to clarify before AMA is ready to launch in February 2019. We look forward to working with VA and this committee to make sure the issues we discussed today are addressed and that AMA can deliver on its promise to veterans.

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 2018, 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.