

**STATEMENT OF  
IAN de PLANQUE  
LEGISLATIVE DIRECTOR,  
THE AMERICAN LEGION  
BEFORE THE  
COMMITTEE ON VETERANS' AFFAIRS  
UNITED STATES HOUSE OF REPRESENTATIVES  
ON  
"EXPLORING VA'S ADMINISTRATION OF INDIVIDUAL UNEMPLOYABILITY  
BENEFITS"**

**JULY 15, 2015**

A recent report of the Government Accountability Office (GAO) examining the Department of Veterans Affairs (VA) Total Disability Individual Unemployability (TDIU) benefit recommends cutting the benefit for veterans over the age of 65<sup>1</sup>. The American Legion strongly disagrees with this recommendation, as it is not only in direct contradiction to clear directions from the Code of Federal Regulations, but it also flies in the face of the current trends in employment statistics and represents a bad precedent – the cutting of veterans' earned disability benefits because the costs of such benefits are increasing. The American Legion worked closely with the GAO in the preparation of the report, and does believe there are improvements that could help increase the efficiency of the program, but cuts to elderly veterans are not the way to begin.

Chairman Miller, Ranking Member Brown and distinguished Members of the committee, on behalf of National Commander Michael D. Helm and the over 2 million members of The American Legion, we thank you for the opportunity to testify regarding The American Legion's position on the Department of Veterans Affairs administration of individual unemployability benefits to our nations' veterans.

The Department of Veterans Affairs (VA) defines individual unemployability as being a part of the overall disability compensation program that allows VA to pay certain veterans disability compensation at the 100% rate even though the VA has not rated the overall veterans service connected disabilities at 100% by the statutory rating scale.<sup>2</sup> It is a recognition that some disabilities, while not rated at 100% may cause serious problems for individual veterans seeking gainful employment.

The Department of Veterans Affairs (VA) disability rating schedule is based upon the severity of chronic medical conditions, and the impact of those conditions upon earnings. For example, if a veteran receives a 50 percent disability rating, the medical condition could impact 50 percent of a veteran's earnings in a labor-intensive work environment. Unfortunately, VA's rating schedule does not always reflect the individual impact of disabilities on individual veterans. A service-connected condition or the combined effects of multiple service-connected conditions could be

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<sup>1</sup> [GAO Report-15-464-June 2015](#)

<sup>2</sup> [http://www.benefits.va.gov/COMPENSATION/claims-special-individual\\_unemployability.asp](http://www.benefits.va.gov/COMPENSATION/claims-special-individual_unemployability.asp)

so severe that the veteran is unable to gain and sustain meaningful employment, even if the veteran's disability rating is not fully 100 percent. As a result, VA provides TDIU benefit.

According to the June 2015 GAO report - *Veterans' Disability Benefits: VA Can Better Ensure Unemployability Decisions are Well Supported* - in Fiscal Year (FY) 2013, there were approximately 333,000 veterans that were receiving TDIU benefits<sup>3</sup>. The report also indicated there was a 22 percent increase in number of veterans receiving the benefits and a 73 percent increase in veterans that were 65 years and older. This is likely reflective of an aging veteran population, and the increasing life expectancy of Americans.

The GAO report suggests discontinuing TDIU benefits beyond the Social Security Administration's full retirement age; the logic that was provided was that veterans older than the full retirement age would not be working due to age and would likely have income from other sources. However, The American Legion disagrees because this not only contradicts clearly stated law in the regulations, it also is not an accurate reflection of the changing statistics of the American workforce.

VA benefits are codified in the Code of Federal Regulations, where it clearly states:

*Age may not be considered as a factor in evaluating service-connected disability; and unemployability, in service-connected claims, associated with advancing age or intercurrent disability, may not be used as a basis for a total disability rating. Age, as such, is a factor only in evaluations of disability not resulting from service, i.e., for the purposes of pension.*<sup>4</sup>

Furthermore (emphasis added):

*...if the total rating is based on a disability or combination of disabilities for which the Schedule for Rating Disabilities provides an evaluation of less than 100 percent, it must be determined that the service-connected disabilities are sufficient to produce unemployability **without regard to advancing age.***<sup>5</sup>

The regulations are clear and have been enforced in this manner for decades without problems. It's not just the way VA has implemented the program, it's the law.

In addition, the labor statistics show that Americans are working later and later into their 60's and beyond, as health and lifespan have improved. From 1977-2007, Americans age 65 and older in the workforce has increased by 101 percent, according to the Bureau of Labor Statistics (BLS); of these individuals, 56 percent are working full-time. These Americans are eligible to collect Social Security retirement benefits concurrent with income received through their employment, according to Social Security's regulations<sup>6</sup>.

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<sup>3</sup> [GAO Report-15-464-June 2015](#)

<sup>4</sup> [38 CFR § 4.19](#)

<sup>5</sup> [38 CFR § 3.341\(a\)](#)

<sup>6</sup> [Social Security: June 2015: "How Work Affects Your Benefits"](#)

When preparing this report, GAO worked closely with The American Legion to understand TDIU benefits. During the process, The American Legion indicated that veterans receiving TDIU are by definition unable to sustain employment. For the Americans discussed in the BLS report, they are able to receive both Social Security benefits and the financial gain of employment. If TDIU benefits were eliminated at retirement age, those veterans receiving TDIU prior to retirement would only be able to survive off of Social Security benefits.

Furthermore, many veterans receive TDIU for decades prior to retirement. Due to this fact, they often do not receive an employer retirement package. Additionally, as the veterans would not have been contributing to Social Security during the period of receiving TDIU, their Social Security benefits would be greatly reduced. In the end, veterans that suffered severe medical conditions related to their military service to this nation that prevented an ability to work would ultimately suffer significant financial hardship once they reached 65 years old. The American Legion opposes ‘any administrative or legislative proposal to dilute or eliminate any provision of the disability compensation program’<sup>7</sup> and will always oppose such diminutions.

Another significant area of concern highlighted in the report was the manner in which TDIU claims were being adjudicated. VA instructs its raters how to adjudicate the claims; however, the implementation of the instructions varies based upon the individual rater. As a result, a certain level of inconsistency in the delivery of the benefit occurs. The report also points to VA’s quality assurance approach and an inability to provide a comprehensive assessment of TDIU adjudications.

The American Legion has testified before Congress on multiple occasions regarding VA’s inconsistencies in the adjudications of claims; these concerns extend beyond TDIU benefits to the types of VA disability claims that are being adjudicated. In December 2013, The American Legion testified regarding concerns pertaining to VA’s evaluation process. Within the testimony, we stated that VA fails to truly provide a comprehensive evaluation, instead opting for a checklist format to indicate that certain considerations have been offered<sup>8</sup>. We continue to assert that a thorough evaluation is unable to occur if VA does not conduct a thorough evaluation of its own processes. The entire purpose of the TDIU rating is to reflect a comprehensive understanding of the unique impact of the complete disability picture on an individual veteran.

In December 2012, VA announced that individuals receiving VA pension benefits no longer are obligated to complete an annual Eligibility Verification Report (EVR). The EVR was designed to verify that beneficiaries were earning below the prescribed amount for eligibility. Within VA’s announcement, they indicated that they had formed a relationship with the Internal Revenue Service (IRS) and Social Security Administration (SSA) to verify income. The American Legion supported the VA’s announcement, recognizing that this would improve efficiency in the administration of the VA pension program<sup>9</sup>.

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<sup>7</sup> [Resolution No.18- AUG 2014](#)

<sup>8</sup> [HVAC Subcommittee on Disability Assistance and Memorial Affairs Hearing-Dec 4, 2013](#)

<sup>9</sup> [VA eliminates Eligibility Verification Report-Dec. 20, 2012](#)

Similar to VA's pension program, TDIU has income requirements. While the GAO report notes that VA has plans to release an electronic data system that is compatible with SSA, it is frustrating that this has been unavailable to veterans receiving TDIU benefits; meanwhile, compatibility appears to exist for the pension program.

Previous employer cooperation also appears to hinder the adjudication process. Had VA been utilizing the relationship created in 2012 with SSA and the IRS, employer cooperation would not be required. Waiting for employers to report income likely takes significantly longer than reviewing an electronic database. The American Legion supports efforts to address all claims, to include its growing inventory of appeals, in an expeditious and accurate manner, provided that no program diminishes a veteran's due process rights.<sup>10</sup> If VA employs the process it efficiently uses with its pension beneficiaries, it would expedite the manner in which some claims are adjudicated.

The American Legion believes efficiencies with TDIU can be achieved through better electronic communication between VA, SSA, and the IRS, much in the same way these efficiencies have been achieved in the pension program. It's a way to improve the overall operation of the program.

### **Conclusion**

The American Legion fully supports TDIU. We recognize that military service is inherently dangerous, and that service may have severe physical and psychological consequences. Quite simply the VA rating schedule does not address each symptom or condition, and the severity of a medical condition may prevent employment for some veterans while not impacting other veterans quite as severely. Through having a strong TDIU program, we are able to ensure that our nation's veterans receive the necessary compensation awarded due to catastrophic medical conditions incurred by our veterans.

There are ways to improve the TDIU program – better data efficiency by communication with other agencies and attention to most consistent adjudication would be two of them. Ensuring adjudicators understand the importance of looking at the entire disability picture of the veteran in question is essential to a well run program.

However, cutting benefits to elderly veterans is a non-starter, and The American Legion strongly urges the Committee to dismiss this GAO recommendation. It contradicts the law, it contradicts labor statistics, and it will directly hurt veterans who have been devastatingly injured in service to this country.

As always, The American Legion thanks this committee for the opportunity to explain the position of the over 2 million members of this organization. Questions concerning this testimony can be directed to Warren J. Goldstein, Assistant Director in The American Legion's Legislative Division at (202) 861-2700, or [wgoldstein@legion.org](mailto:wgoldstein@legion.org)

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<sup>10</sup> [Resolution No. 28: May 2015](#)