

STATEMENT OF
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BEFORE THE

HOUSE COMMITTEE ON VETERANS' AFFAIRS
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

September 10, 2014

Chairman Coffman, Ranking Member Kirkpatrick, and Subcommittee Members, thank you for providing me the opportunity to discuss the Board of Veterans' Appeals' commitment to providing all Veterans, their families, and Survivors with timely and accurate decisions on their appeals and ensuring the integrity of the data that we use to measure our workload and effectiveness in carrying out our mission.

The Board of Veterans' Appeals' (Board) mission has remained unchanged since the Board was first established in 1933 – that is, to conduct hearings and adjudicate appeals properly before the Board in a timely manner. The Board's jurisdiction extends to all questions in a matter involving a decision by the Secretary under a law that affects a provision of benefits by the Secretary to Veterans, their dependents, or their Survivors. Final decisions on such appeals are made by the Board based on the entire record in the proceeding and upon consideration of all evidence and applicable provisions of law and regulation.

The VA appeals process is unique from other standard appeals processes across Federal and judicial systems. It has multiple steps of de novo review with a continuous open record, such that a Veteran, Survivor, or other Appellant can submit new evidence or make new arguments at any time. As a result, an appeal does not simply progress from start to end, but may involve many cycles of additional

development and adjudication as the evidentiary record and the theories of entitlement evolve.

Appeals are initiated at the Agency of Original Jurisdiction (AOJ), and nearly all (approximately 96 percent) appeals considered by the Board arise out of claims for disability compensation that were decided by the Veterans Benefits Administration (VBA). In Fiscal Year (FY) 2013, approximately 10 percent of initial VBA claims decisions were appealed (i.e., 118,053 Notices of Disagreement (NOD) received at VBA), and 4.5 percent of these appeals (i.e., 52,860 appeals received and docketed at the Board) continued through all the initial appeals processes and were certified and transferred to the Board for adjudication.

The VA appeals process divides responsibility between VBA and the Board. The current process provides Appellants with multiple reviews in VBA and one or more at the Board depending upon the submission of new evidence or whether the Board determines that it is necessary to remand the matter to VBA. In addition to the VA appeals process, claimants have had the right to judicial review of VA's decisions on their claims since 1988. If an Appellant is dissatisfied with a final Board decision on a claim, the Appellant may appeal to the United States Court of Appeals for Veterans Claims (CAVC) within 120 days of the date of the decision. Further, limited review is available in the United States Court of Appeals for the Federal Circuit and United States Supreme Court. The 1988 legislation placed judicial review on top of the multiple layers of the VA appeals process that had evolved since World War I.

The Board is required by law to consider and decide appeals in docket order, with some exceptions including: hardship, advanced age, serious illness, CAVC remands. The Board is permitted to screen cases for the adequacy of the record for decisional purposes and may order development in those cases, irrespective of docket order. Since 1994, the Board has assigned a docket date (i.e., a place in line) commensurate with the date that a substantive appeal (such as a VA Form 9) is filed at the AOJ level, typically a VBA regional office (RO), in order to ensure that all Appellants

are treated fairly in docket order assignment regardless of the workflow at a particular RO. This means that when the Board receives an appeal (either a paper claim folder or a virtual case) a docket number is assigned that matches the date that the appeal was formalized at VBA as opposed to the date that the appeal arrived at the Board. Additionally, when the Board remands cases for additional evidentiary development, they retain the same docket number (i.e., place in line) if they return to the Board. Finally, if a hearing is held on the appeal, the Veterans Law Judge (VLJ) who held the hearing must participate in the final determination, by law. Thus, docket management at the Board is a complex, non-linear process, to ensure compliance with the above legal requirements and fairness for waiting Veterans.

In FY 2014, the Board continues to issue high-quality decisions and conduct hearings in appeals. We are continuing to seek and implement innovative ways to improve business processes through a variety of pilot programs and technological advancements. In the past 18 months, the Board underwent an unprecedented period of growth in staff size, having hired approximately 200 new staff during that timeframe, growing the organization from 514 FTE in April 2014 to 663 FTE FYTD (a 29% increase in staffing levels). This significant growth necessitated implementation of new hiring and innovative training programs. Such programs have proven successful as the Board is on track to increase its decisional output by 30% in FY 2014, as compared to FY 2013. The Board also continues to work with stakeholders, such as Veterans Service Organization (VSO) representatives, on ideas to streamline the VA appeals process.

Fiscal year-to-date, the Board has adjudicated over 50,000 appeals for waiting Veterans and their families, which is a record-breaking number since the advent of judicial review in 1989. Additionally, the Board's 64 VLJs (which includes 10 supervising VLJs) personally interacted with over 11,000 Veterans by holding hearings, either held face-to-face at a VA facility, in-person at the Board's offices, or through video teleconference (VTC) between the Board and a VA facility. Most VLJs have traveled to at least two ROs to conduct one week of hearings at each site (known

as “Travel Board” hearings), in addition to holding a large number of VTC hearings and Central Office hearings.

Although the Board still primarily works in a paper environment, the proportion of fully electronic (virtual) cases in the Veterans Benefits Management System (VBMS) pending Board disposition continues to increase. As VBA completes an increasing number of claims each year, the Board expects to receive an increase in appeals proportionate to VBA's higher output in claims decisions.

The Board continues to leverage technology where possible in order to gain efficiencies in case processing. In particular, the Board initiated and implemented a program to schedule Board hearings by use of a virtual docket, digitize the resulting hearing transcripts rather than manage them in paper form, and, working with VSOs, digitize informal hearing presentations, which are written arguments submitted by VSOs on behalf of Appellants. These changes help prepare the Board for working in a virtual environment, as VA proceeds with its Department-wide transformation to a fully electronic claims/appeals adjudication system. Further, the Board maintains its presence on eBenefits – a joint venture between VA and the Department of Defense, which provides Veterans the opportunity to check the status of their claims and appeals securely online or from their mobile device.

The Board continues to focus on methods to increase the quality of the decisions rendered while maintaining a high level of decision output. The Board's Training Office created targeted training for all employees based, in part, on trends gleaned from the Board's quality review process, as well as on outcomes in cases heard before the CAVC and the Federal Circuit. In addition, the Board continues to offer medical training for its staff to address the complexity of disability compensation appeals, and devoted extensive efforts in assisting the Veterans Health Administration's Office of Disability and Medical Assessment in working to improve the compensation and pension examination process in order to improve the quality of examination reports.

The Board continues to challenge its employees to maintain high levels of quality, and through these efforts maintains an accuracy rate of over 94 percent this fiscal year. The Board's accuracy rate (i.e., the Board's deficiency-free rate) quantifies substantive factual and legal deficiencies in all decisions, whether an allowance, a remand, or a denial. To determine its accuracy rate, the Board uses a weighted formula that was created in collaboration with the U.S. Government Accountability Office (GAO) in 2002 and 2005. Any quality deficiencies identified during the quality review process are addressed through appropriate follow-up training for VLJs and attorneys.

The Board is committed to leveraging efficiencies in its business processes to better serve Veterans and their families. In FY 2014, the Board began to implement various business process improvements to meet the anticipated rise in incoming workload. Specifically, Board leadership actively encouraged shorter, more focused decision-writing. More streamlined work products allow the Board to adjudicate appeals in a more efficient manner.

The Board has also leveraged its statutory authority (38 United States Code § 7107(f)) to implement an appeals screening initiative to review appeals so that cases requiring additional development can be quickly returned to the VBA for processing. By law, the Board is required to decide appeals in docket order, but may screen appeals to assess the adequacy of the record and information provided. This screening process (known as "Rocket Docket") can save wait time for the small number of Veterans who met requirements for this pilot program. The Board will collect and analyze data to refine its appeals screening processes to ensure that this initiative dovetails with the Board's mission of issuing quality final appeals decisions to Veterans and their families in a timely fashion.

VA recognizes that under the framework established by current law, Veterans are waiting too long for final resolution of appeals. VA cannot fully transform the appeals process without stakeholder support. VA will continue to work with Congress and other

stakeholders, to include continuing a strong partnership with VSOs, to explore long-term solutions that provide Veterans the timely appeals process that they deserve.

This concludes my testimony. I would be happy to address any questions from the Committee.