

STATEMENT OF
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BEFORE THE

SUBCOMMITTEES ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS
AND OVERSIGHT & INVESTIGATIONS
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES

WITH RESPECT TO

“Examining VA’s Processing of Gulf War Illness Claims”

WASHINGTON, D.C.

July 13, 2017

Chairmen Bost and Bergman, Ranking Members Esty and Kuster and members of the Subcommittees, on behalf of the men and women of the Veterans of Foreign Wars of the United States (VFW) and its Auxiliary, I would like to thank you for the opportunity to testify on the Department of Veterans Affairs (VA) disability claims process with respect to Gulf War Illness.

As professionally trained, accredited advocates, VFW service officers work extraordinarily hard to ensure our veterans and their families receive the maximum benefit allowable by law from the VA. All too often, however, this does not happen for a myriad of reasons and contributing factors. In relation to the topic of today’s hearing, I refer to a signature condition of the Persian Gulf War referred to largely across the veterans’ community as Gulf War Illness (GWI) or more commonly in VA, as “Medically Unexplained Chronic Multisymptom Illness.”

Unlike nearly all other claimed conditions, Gulf War Illness is intrinsically difficult to diagnose and treat. GWI has no clear and concise set of rules. In other words, no one distinctive set of symptoms that allow for a single, unmistakable diagnosis. Gulf War Illness presents itself as a conglomeration of possible symptoms to which countless members of the general public with no military experience can also be subject. As such, Persian Gulf veterans have a steeper hill to climb in relating the symptoms to service — the most critical link in establishing service-connection.

None of this is remotely possible without the benefit of a VA examination (VAE), either at a VA medical facility or with a VA contracted provider. As VA continues to evolve on a number of fronts, mostly with regard to the transition to electronic filing and continued concentration on managing the current claims inventory, VA developed the Disability Benefits Questionnaire (DBQ) with an eye towards efficiency and timeliness.

Last year, the VFW strongly advocated for the elimination of the parsing out of symptoms and placing greater concentration on the clustering of these indicators of potentially one illness affecting multiple body symptoms, as opposed to specific conditions related to each symptom. Put more simply, the VFW feels GWI claimants would be better served by VA eliminating the assignment of multiple DBQs for seemingly unrelated symptoms upon the receipt of a diagnosis, and posit from the outset that the evidence meets the criteria for Gulf War Illness, as opposed to its current form of considering the possibility as a last resort. It was and remains our contention that the current system of assigning separate DBQs for each symptom being claimed in association with GWI promotes the potential for incorrectly assigning a diagnosis to a condition linked to GWI. Thus, either improperly or inadvertently negating the requirements of section 3.317 of title 38, Code of Federal Regulation (CFR), which ultimately results in the veteran's claim being denied.

Regrettably, in the 479 days since these distinguished committees last met to discuss this topic and pressed VA to develop a single DBQ for GWI that would assist in empirically establishing service-connection, VA's Office of Disability Assistance, has not reported any progress in the development of a single Gulf War Illness DBQ as Congress suggested, and veterans suffering from these chronic conditions that may give the appearance of a confirmed etiology continue to have their claims denied. VA continues to rely on a "Gulf War Illness General Medical DBQ" that is not singular in nature for claims of GWI, but instead rely on the subjective, non-medically trained construal of a claims assistant to interpret a veteran's claimed conditions and schedule the appropriate VA examinations. When asked about the possibility of the creation of a more favorable DBQ, the response of record was that "VA would look into the issue" and "First, we have to confirm that [lack of a single DBQ] is a real problem." However, every Veterans Service Organization sitting at this table has offered data, verifiable stories, and written statements as to that very point, yet the problems in rating these claims continue.

Beyond the VFW's continued concern with the illogical requirements of service-connection for Gulf War Illness, is the downstream effect of the appellate process. VFW advocates who represent those whose claims were denied continue to recognize the numerous inconsistencies when decisions from the Board of Veterans Appeals (BVA) are remanded to the VA Regional Office. In assessing pending appeals for GWI, the VFW professional staff at the BVA notes that VA appears to clearly favor finding a diagnosis for each reported system and, thereby, rule out GWI, rather than further developing and accurately applying the rating schedule to a diagnosis that is even a minimally supported one. The VFW urges VA to consider both possibilities as existential. Since the preponderance of evidence shows the possibility that GWI may exist, the balance of evidence as to GWI's nonexistence is equal or in "equipoise." Therefore, in accordance with section 3.102 of title 38, CFR, there exists enough "Reasonable Doubt" that VA should develop the claim for the potential grant of Gulf War Illness disability.

The VFW suggested in prior testimony that inconsistencies in the application of the rating schedule is universal across the VA Regional Office spectrum with regard to claims for Gulf War Illness disabilities. While we are not in any way suggesting that this is deliberate, we continue to put forward that a grant for Gulf War Illness in Maine should be exactly the same in Ohio, Iowa, or any other VA Regional Office based on the same evidence and fact pattern. VA's Office of Performance Analysis and Integrity has demonstrated their capability to track data nearly to the key stroke. This presents the perfect opportunity to identify and develop best practices across the Veterans Benefits Administration in properly adjudicating claims for GWI and eliminate the disparities that currently exist. At the very least, now that the National Work Queue (NWQ) is in effect, VA could easily distribute these "specialized" claims to the regional offices that have a proven track record in proper application of section 3.317 of title 38, CFR, with an eye toward the centralization of Gulf War Illness claims as is the case with claims for exposure to toxic water at Camp Lejeune, Lewisite, Spina Bifida and other "non-routine" issues.

Over the past six years, much of VA's effort has been focused on the backlog of existing claims. In the attempt to reduce this inventory as efficiently and expeditiously as possible, VA has relied exceedingly further on the use of contract examiners to meet demand and relieve the burden from the Veterans Health Administration (VHA). While this has allowed VHA to direct resources to provide health care to those already service-connected or otherwise enrolled in the VA health care system, far too often we are alerted to contract exams that are hastily conducted, not performed to VA standard (not compliant with the DBQ required to evaluate the disability), or not properly scheduled. For this reason, the VFW believes that developing a single DBQ intended specifically for identifying and rating Gulf War Illness and accurate, continuous training on how to complete these exams will result in the proper application of the law and the veteran receiving the appropriately awarded benefit their service has earned.

As one of the nation's largest VSOs responsible for providing direct assistance to veterans seeking their earned benefits, the VFW continues to urge Congress to employ its oversight authority regarding the development of a single use DBQ for Gulf War Illness, proper training for VA examiners and claims adjudicators, and the consideration of centralizing these claims through the NWQ to ensure consistency.

Messrs. Chairmen, this concludes my testimony. I will be happy to answer 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 2017, 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.