

**STATEMENT OF
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THE AMERICAN LEGION
BEFORE THE
SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
ON
"DEFINED EXPECTATIONS: EVALUATING VA'S PERFORMANCE IN THE
SERVICEMEMBER TRANSITION PROCESS"**

MAY 29, 2014

At its core, the disability process for veterans always revolves around three very simple points of fact.

1. Does the veteran have a current medical condition?
2. Did that condition occur, originate, or worsen during their period of service?
3. Is there a medical opinion linking the occurrence in service with the current condition?

As veterans transition from their active duty careers in the military to their veteran status in the civilian world, answering these three questions should be a little easier than it is for a veteran who applies for disability compensation years after service. Transitioning veterans have access to military medical examinations, a complete electronic record of their military health history; there are no questions about intervening civilian years and what impact they might have had on a veteran's health. In short, service connected disability claims in transition should be far simpler and yet the systems put in place to deal with veterans in transition - the Integrated Disability Evaluation System (IDES), the Benefits Delivery on Discharge (BDD) program, and the Quick Start (QS) program still struggle, much as the traditional disability claims process does, with backlogs, delays and confusion.

Despite the simple equation for service connection illustrated above, the process for service connection of disabilities remains complicated. Service members and veterans alike benefit from experienced personnel familiar with the system who can help them navigate the complicated claims process. Unfortunately, the most experienced personnel assisting veterans with the claims process – veterans' service organizations (VSOs) are often restricted in access while the service members are still in DoD facilities.

The American Legion currently works nationally to assist service members across the United States. Our organization has staff assisting with the MEB/PEB process from the Soldier Family Assistance Center (SFAC) at Joint Base Lewis-McChord, WA, and from the National staff offices in the nation's capitol, we support the Washington D.C. Capital Region and the Warrior Transition Units located at Walter Reed National Military Medical Center (WRNMMC), Fort Belvoir, VA, and Fort Meade, MD. The American Legion provides assistance reviewing the

findings of the board, writing rebuttals and answering questions on the IDES process. In addition The American Legion maintains service officer staff at the VA's BDD sites in Winston-Salem, NC and Salt Lake City, UT to assist veterans with over 500 BDD and QS claims quarterly, reviewing exam results, as well as representing service members in hearings when warranted.

The American Legion has been focused on the challenge of transitioning service members over the past decade of war, and while some improvements have been made to the transition process, it has been well documented that the Department of Defense (DoD) and the Department of Veterans Affairs (VA) still do not have a single, integrated and interoperable medical records system to communicate health data. Between 2009 and 2012 DoD and VA wasted over a billion dollars to develop an interoperable health record, and today, still struggle to communicate.

In previous years, the DoD and VA rated disabilities according to differing sets of criteria. The IDES templates emerged to ensure when a service member was being evaluated, DoD and VA were operating out of the same playbook. Rather than requiring a DoD exam and a separate VA exam, service members can now get one Compensation and Pension (C&P) exam that meets the needs of both agencies, and for cases where a rated condition causes a service member to fall short of retention standards, the DoD must apply the same rating provided by the VA through Title 38 of the Code of Federal Regulations (CFR).

The IDES system has been helpful in some ways, generally providing for a shorter gap between retirement or discharge and VA benefits delivery, although that gap is still over 60-90 days in many circumstances. Other problems have emerged, which The American Legion has recorded through working with veterans in the IDES process.

American Legion claims' officers often find that service members still are suffering from a shortage of relevant facts to make informed decisions about the IDES process, and because these decisions will affect the balance of their civilian lives, informed decisions are critical. The issue becomes even greater for National Guard and Reserve component service members. In some cases active component personnel are able to have their cases adjudicated on an active duty post far from their hometown. National Guard and Reserve units, on the other hand, lack the full infrastructure of support available to active duty troops and this can hamper their ability to work through the process.

The American Legion has learned that Guard and Reserve members are especially challenged by a severe lack of Line of Duty (LOD) investigations. Line of Duty investigations are more critical for Reserve component troops because the disability process will not compensate them for conditions acquired during their down time, only while they are on active duty or training. While regular active duty service members are eligible for benefits for anything that happens during their period of service, including ongoing health conditions such as sleep apnea, Guard and Reserve members must be able to point to specific incidences while activated, or during training, and require LOD investigations. It can prove difficult to gather witnesses and corroborate injuries when unit members are released back to their homes across state lines after drill weekends.

Service members undergoing evaluation can be placed on the Temporary Disability Retirement List (TDRL) which is used for service members found unfit to continue duty but who may have conditions that are not stable and thus cannot be assigned a permanent rating. Once placed on the TDRL these service members undergo periodic examinations to determine if the condition has improved, worsened or remained the same. Veterans can wind up further assigned to the Permanent Disability Retirement List (PDRL) and given a DoD disability percentage based on the subsequent examinations.

The American Legion is seeing that when service members are assigned to the TDRL for an extended period of time, they often wind up losing valuable time and benefits. Service members can be assigned to the TDRL for up to five years which places them in a kind of limbo status, not eligible for benefits, and not able to participate in drills or active duty. We have also found that that these reexaminations are done independent of VA, so veterans can wind up with different ratings for the same conditions; this is one of the challenges that IDES was supposed to solve.

An American Legion employee assisting a Navy veteran with a disability claim found the sailor was being reduced in rating from 50 percent to 30 percent and being moved to the PDRL. Upon examining the claims folder, The American Legion found that the exam used to reduce the sailor's rating was not an exam of that sailor, but of another individual in the IDES system. This example highlights the critical need for experienced service officers to be accessible available for service members when proceeding through the disability process.

Finally, service members in the IDES program express concerns to The American Legion that once they enrolled in the program, their access to care within DoD decreased. In essence, they feel that DoD is reluctant to pursue any further procedures such as surgery because it would unnecessarily extend the IDES timeline. This cannot be the intended result of the IDES program, and The American Legion believes that additional oversight of the IDES program may be warranted.

With the two key programs of BDD (for service members with between two months and half a year expected before discharge) and Quick Start (for service members with less than two months expected before discharge), The American Legion is finding that some problems still remain.

The VA Office of the Inspector General (VAOIG or OIG) recently completed an audit of the Quick Start program, finding troubling delays remain and accuracy figures well below VA target numbers. While VA was able to reduce the Average Days to Complete a Claim (ADTC) from 291 days in 2011 to 249 days in 2013¹ the accuracy of those claims still remains below 70 percent². The OIG found the lengthy ADTC rates were due to insufficient program controls in VA and recommended recurring program evaluations and increased training on processing QS claims.

The American Legion is concerned the VA Undersecretary for ~~Benefit's~~ Benefits response not only disagreed that "*untimely claims processing occurred because of inadequate program controls.*" But that "*The Under Secretary stated the untimeliness[sic] was primarily the result of*

¹ VAOIG Report 12-00177-138 "Audit of VA's Quick Start Program" May 20, 2014

² IBID

VBA outreach, veterans' use of technology to learn about available benefits, demand for compensation resulting from twelve years of war, and VA efforts to provide benefits to veterans exposed to Agent Orange."³

To begin with, blaming VA's lack of timeliness of veterans' claim, on veterans actually finding out they are entitled to benefits is unnecessarily combative. Further, it's unclear how the increase in Agent Orange claims, which were supposed to be processed in separate VA sites, impacted the processing of QS claims which also go through a completely different channel for benefits. The streams of returning Global War on Terror Quick Start claims are supposed to be processed in different sites than the influx of additional Agent Orange claims brought about by the Secretary's laudable decision to proceed forward with the findings of the Institute of Medicine (IOM) which added three additional conditions to the list of those presumptively associated with exposure to the chemical herbicide Agent Orange.

The American Legion is concerned because this speaks to a larger problem. Rather than addressing the criticism that there may be systemic problems with how certain type of claims are processed, it is the response of the Undersecretary to deflect blame to the veterans themselves and attempt to pit two generations of veterans against each other. This attitude cannot continue, and there must be recognition from VA that criticism, whether from OIG or other stakeholders such as VSOs, comes from intent to improve and strengthen the VA system and make it better able to serve veterans.

The American Legion has been vocal in past testimony and has informed both VA and congress that service members actually *don't* have an overabundance of information about their claims to bombard VA. The American Legion believes there needs to be a more robust presence of VSOs on the DoD side in order to provide these veterans with the education and assistance they need throughout transition. The American Legion has argued for better dissemination of information⁴ by both DoD and VA, as well as arguing to make the IDES system robust enough to assist veterans with Vocational Rehabilitation and Employment programs⁵. Better support is needed for National Guard and Reserve members to ensure they do not fall behind their active duty counterparts.

All of these challenges can be improved with better integration of stakeholders at all levels of the process. There must not be so severe a disparity in access to support between active duty, Guard and Reserve, and veteran that these men and women who deserve these earned services must continue to struggle unnecessarily. The American Legion is committed to helping veterans through all phases, and the government must enjoin with us do the same. Increased access to service members to lend support through the process will help smooth the process for all parties involved.

³ IBID

⁴ Resolution No. 42: "Compensation Benefits Information Disseminated at all Transition and Access Points"

⁵ Resolution No. 32: "Enhancements to Integrated Disability Evaluation System Process"

The American Legion thanks this committee for their diligence and attention to the transition process, which is often overlooked when considering disability evaluation. We are happy to continue working with VA, DoD and the committee to ensure the best results for veterans.