

STATEMENT OF
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BEFORE THE
UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON VETERANS' AFFAIRS
SUBCOMMITTEE ON DISABILITY ASSISTANCE
AND MEMORIAL AFFAIRS

WITH RESPECT TO

**“VA Compensation and Pension Exams During the COVID-19 Pandemic:
A Path Forward”**

WASHINGTON, DC

March 23, 2021

Chairwoman Luria, Ranking Member Nehls, and members of the subcommittee, on behalf of the men and women of the Veterans of Foreign Wars of the United States (VFW) and its Auxiliary, thank you for the opportunity to provide our insight on Department of Veterans Affairs' (VA) Compensation and Pension (C&P) exams during the COVID-19 pandemic and moving forward.

C&P exams are critical to perfecting VA benefit claims. VA uses C&P exams as the primary means with which to evaluate a veteran's disability in order to assign a service-connected percentage. Even if a veteran has sufficiently satisfied the three pillars of service connection—diagnosis of a chronic disability, event in service, and medical nexus—VA must have the ability to evaluate the current extent of the disability before assigning a rating.

Unfortunately, when COVID-19 started to spread across the United States, VA made the difficult decision to suspend all C&P exams out of concern for the safety of veterans. The VFW maintains that this was the only responsible choice that VA had in the early days of the pandemic, as COVID-19 upended the lives of every American, including those who work to serve the needs of our veterans. The moment VA suspended all exams, an unavoidable backlog started to build.

As we learned more about the virus and became more confident in safety protocols, VA restarted its C&P exams, but continued to respect the wishes of veterans who did not feel comfortable attending in-person exams, as well as contract providers who similarly could not complete certain C&P exams due to COVID-19 concerns. Currently, the vaccine is being rolled out across the country in a race to control community spread. The VFW is hopeful for a return to normalcy

in the near future, but we also realize that rebuilding from this devastating pandemic will present challenges to everyone involved in the VA disability claims process.

The new VA leadership and contract vendors are openly communicating with Veterans Service Organizations (VSOs) regarding the backlog. It will take a concerted community effort to ensure veterans do not slip through the cracks after the C&P exam pause, such as VSOs working with our clients to make sure they can safely report for their exams. The criticism that you will read in our testimony is not designed to malign VA or its contract examiners. We respect and empathize with the challenges they have faced over the last year and the difficult decisions that they have been forced to make with the best available information. We believe that VA and its contractors have been well-intended in their efforts to address the C&P backlog, but it is our obligation to call attention to shortcomings to ensure these processes best serve our veterans.

Through the VFW's Pre-Discharge claims program, which provides benefits assistance to transitioning service members on military installations around the country, we have heard from frustrated clients about long delays in claim processing. As we looked into their concerns, we quickly learned that more than 23,000 exams for recently separated service members remain stuck in administrative processes with the contract examiner, QTC.

After discussing the situation with QTC, the VFW is concerned that VA and its contractors do not have proper optics on where certain exams are in the C&P process. We have heard conflicting information that the bulk of pending exams are for veterans who have reported to the examiners that they are unwilling to report for their exams due to the COVID-19 pandemic. However, when we discussed this topic with the contractor, we learned that some of these pending exams are commingled with exams for which the contractor cannot verify the contact information for a claimant. To the VFW, these are separate and distinct groups that must be handled differently.

First, any claimants who cannot be contacted should have their exams returned to VA for further clarification. Second, the contract vendors should create protocols for periodically contacting claimants to verify when they are willing to appear for exams.

Next, the VFW recognizes that VA has directed its contract vendors to prioritize benefit claims for severely injured service members participating in the Integrated Disability Evaluation System (IDES) over those who file claims through the Benefits Delivery at Discharge (BDD) program. Again, the VFW agrees with this prioritization, but we are concerned that the potential delays are not effectively communicated to BDD program participants. The VFW recommends that when VA receives a BDD claim, it should proactively notify the veteran to expect delays due to the COVID-19 pandemic. At the moment, this task is falling to our service officers whenever one of our clients reports concerns about delays in their claim. To address this, the VFW added a button to our benefits assistance webpage, www.vfw.org/NVS, notifying BDD clients about potential delays in claims processing due to the COVID-19 pandemic.

As the VFW hears from more clients about the status of their claims, we believe that much of the confusion is due to a lack of communication and customer service. One veteran represented by the VFW who separated from the military on October 1, 2020, filed his pre-discharge claim on

June 26, 2020, which was well within the timeframe for the BDD program. His exams were ordered on June 29, 2020. However, the contract vendor was not able to complete the exams until October 2020. To date, the results are still not uploaded into the veteran's claim file for review and adjudication. This veteran's claim is now excluded from the BDD process, despite following the rules and reporting as required. When this veteran contacted the vendor, he was told that his exams were still awaiting quality assurance review before reporting the results to VA.

Another client we represent filed a BDD claim on June 29, 2020. His exams were ordered on July 1, 2020. Several were completed in August 2020, but he recently completed a cardiac exam in December 2020, two months after his discharge. He has since received a partial rating, but the results of the cardiac exam are still missing from the claim file.

In our conversation with QTC, the VFW learned that this quality assurance process may more likely mean that there are certain additional exams or medical reviews needed in order to report completed exams to VA. For example, most of VA's contract vendors are still restricted from completing exams that expel significant aerosols, such as pulmonary function tests, because of COVID-19 safety protocols. However, this is not clearly communicated to veterans when they inquire about the delay.

Next, in discussing the backlog with the contract vendors, the VFW was told that the vendors are doing everything in their power to address the backlog as quickly as possible, to include onboarding new providers, standing up C&P clinics at community hubs like VFW Posts, and working extended night and weekend hours. The VFW supports this, as this is the only way to bring the backlog under control.

However, the VFW once again must insist that the vendors do not sacrifice quality in this process. Just last week, the VFW was notified by one of our service officers in Minnesota, Lynette Bonin, that a VFW client who was working with one of our cross-accredited County Veterans Service Officers, Michael McLaughlin, had to cancel an upcoming C&P exam because of her concern about the location and lack of clear communication. Mr. McLaughlin also passed along his concerns directly to the subcommittee staff in advance of this hearing.

This veteran was scheduled for a mental health exam at a hotel more than an hour and a half from her home. Moreover, no additional details were provided to the veteran, such as provider name or where specifically to report. The veteran was understandably uncomfortable reporting to a hotel for her exam and worked with her representatives to ensure it would be rescheduled.

To the VFW, this incident calls into question not only the quality of providers and locations offered to veterans, but also the clarity in communication that veterans receive regarding their upcoming exams. In this instance, it may be perfectly appropriate to host a C&P clinic at a hotel conference facility, but when veterans are notified of such exams, they must receive clear communication about providers, location, and safety protocols, especially when reporting for a mental health exam.

Mr. McLaughlin brought the concerns about inadequate or unprofessional exam locations before the House Committee on Veterans' Affairs on behalf of the National Association of County Veterans Service Officers in the past. The VFW agrees that this remains a serious concern for veterans. When facing the current C&P backlog, the contract vendors must be extremely sensitive to this concern and ensure that C&P exam spaces are professional environments sufficient for providing the safety and confidentiality of veteran claimants.

The VFW understands that the complexities of the COVID-19 pandemic have created considerable confusion for all parties, including VSOs. Everyone scrambled to implement new protocols to safely serve veterans, but competing priorities make it difficult to properly handle every kind of claim. However, attention to detail must remain paramount in meeting the needs of each claimant.

As an example, the VFW was contacted in early February by a client due to deliver her child the last week of February, because she was concerned she had been scheduled for a series of C&P exams in her third trimester of pregnancy. In reviewing her claim file, both VA and the contract vendor handling her examinations were responsible for the confusion.

VA proactively notified the veteran on multiple occasions that since she was pregnant, all of her exams would be appropriately delayed until after her baby was born. She was further instructed to contact VA at the appropriate time to restart her exam process. However, in December, a VA employee erroneously initiated an inquiry with the contract vendor on the status of her exams. The vendor next erroneously replied that her exams could not be completed due to force majeure, namely the COVID-19 pandemic. Then, in February, the vendor abruptly scheduled the veteran for exams, including an audiology exam at a location more than two hours from the veteran's home with only one day's notice. A VFW representative spoke to the veteran while she was on the way to this exam, then quickly contacted both VA and the contract vendor to ensure that her subsequent exams were appropriately rescheduled.

Upon our inquiry, both the vendor and VA handled the situation appropriately and apologized profusely for the confusion. Again, we believe this was solely the result of an overburdened system. However, both VA and the vendors must ensure that their teams pay close attention to each veteran's claim and handle each claim responsibly and appropriately.

Finally, the VFW worries that two abrupt decisions in 2020 may have exacerbated the backlog when C&P exams were paused due to the COVID-19 pandemic—the elimination of private provider Disability Benefit Questionnaires (DBQs) and the decision to shutter C&P clinics in Veterans Health Administration (VHA) facilities. The VFW thanks this committee for taking swift action to address both of these short-sighted decisions through the *Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020*.

Now that VA has reintroduced private provider DBQs, the VFW believes this may help alleviate some of the burden to complete C&P exams, if used properly. We encourage VA to fully utilize private DBQs when evaluating evidence in an effort to rate benefit claims in a timely manner. VA should also consider lifting its prohibition on using private medical evidence secured via telehealth for rating purposes. VA has appropriately exercised flexibility in completing certain

VA exams via telehealth. Since the COVID-19 pandemic has changed the manner in which many Americans receive care, VA must consider this when evaluating private medical evidence. Moreover, since VHA was forced to stall the closure of C&P clinics, the VFW believes now is the time to bolster this capability to complete as many quality exams as possible.

To paraphrase General Omar Bradley when discussing the mission of VA, “We are dealing with [veterans], not procedures; with their problems, not ours.” As we come out of the COVID-19 pandemic, these words must resonate with all of us who serve veterans. To the VFW, much of this can be accomplished with effective communication, customer service, and business practices that represent the best interests of the veterans we serve. We look forward to continuing to work with this subcommittee and our partners in VA, as well as VA’s contract vendors, to make this happen.

Madame Chairman, this concludes my remarks, and I am eager to answer any questions the subcommittee 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 2021, 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.