



Statement for the Record

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For the

**U.S. House of Representatives
Committee on Veterans' Affairs
Subcommittee on Oversight and Investigations
and
Subcommittee on Disability Assistance and Memorial Affairs**

**Hearing Entitled:
"Examining VA's Processing of Gulf War Illness Claims"**

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Thank you, Chairmen Bergman and Bost, Ranking Members Kuster and Esty, and Members of both Subcommittees for your support of Gulf War Veterans and for holding today's hearing about the processing of Gulf War illness (GWI) disability compensation claims administered by the U.S. Department of Veterans Affairs (VA).

My name is Paul Sullivan, and I am a disabled Veteran who served as a cavalry scout in the Army's 1st Armored Division during the first ground invasion of Iraq and Kuwait during the 1990 – 1991 Gulf War. I'm also the Director of Veteran Outreach at Bergmann & Moore, LLC, a national law firm based in Maryland representing Veterans with claim appeals before VA, including the Board of Veterans Appeals (Board) and the Court of Appeals for Veterans Claims (Court).

Since becoming ill in the war zone and returning home, I've dedicated my professional life to assisting fellow Veterans. For more than two decades, I continue working closely with Veterans who were denied VA benefits, including fellow ill Gulf War Veterans.

Since my first appearance on July 16, 1998, I've had the honor of testifying several times before the House and Senate with the goal of improving government policies regarding Veterans, including several hearings on GWI claims. My statement today again focuses on government policies and practices.

However, there is an important addition in my statement for this hearing. For the first time, I am providing Congress with a description of VA errors, delays, inadequate exams, lost records, and retaliation. I am still waiting on VA to decide my GWI claim originally filed on July 28, 1992. It remains deferred and undecided at a regional office.

The Subcommittees are rightfully concerned to focus on GWI claims. Congress acted properly in 1994, 1998, 2001, and 2010 with new laws to assist Gulf War Veterans with obtaining VA service connection in order to obtain free VA treatment (38 USC 1117 and 1118). Congress acted wisely and carefully based on the urgent needs of hundreds of thousands of ill Gulf War Veterans who reported ailments associated with toxic exposures after deploying to Southwest Asia during Desert Shield and Desert Storm.

Many fellow Gulf War Veterans and family members worked diligently with Congress for years to help pass the laws because VA research indicates as many as 250,000 Gulf War Veterans remain ill. Your continued involvement is welcome and appreciated.

With some exceptions, in order for Veterans to obtain free treatment at a VA medical center, Veterans need to be granted service connection via VA's highly complex and often adversarial disability compensation claim process. One of the most important exceptions is a law providing free healthcare for Veterans who deployed to a war zone for five years after discharge from active duty (38 USC 1710). The law, enacted as part of the landmark "Persian Gulf Veterans Act of 1998," was expanded by Congress from an initial two years to five years in 2008. Hundreds of thousands of Veterans who deployed to our current conflicts in and around Iraq and Afghanistan have used this new VA healthcare benefit, and I thank Congress for passing and expanding the law.

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GAO FINDINGS

Today's hearing was prompted by the new report issued by the U.S. Government Accountability Office (GAO) into VA's mishandling of GWI disability compensation claims ("Gulf War Illness: Improvements Needed for VA to Better Understand, Process, and Communicate Decisions on Claims," GAO-17-511, June 2017). Bergmann & Moore thanks Congress for requesting the GAO investigation into VA's processing GWI claims. However, GAO's conclusions raise serious concerns for Congress to address:

- **Hundreds of thousands of Gulf War Veterans remain ill:** "Nearly 30 years after the Gulf War conflicts began, hundreds of thousands of veterans continue to experience chronic medical conditions that may be related to a host of hazardous exposures they faced while serving our country...."
- **Gulf War Veterans were exposed to toxins:** According to the GAO, Gulf War Veterans were exposed to "pesticides, smoke from oil well fires, and depleted uranium that could be linked to their medical conditions." Other hazardous exposures include pyridostigmine bromide chemical warfare agent pre-treatment pills and chemical warfare agents such as sarin and mustard gas.
- **VA examiners lack training:** Only 10 percent of VA medical professionals conducting Compensation and Pension (C&P) exams for Veterans seeking service connection for GWI were trained using VA's voluntary 90-minute video.
- **VA examiners are confused:** VA medical professionals conducting C&P exams for GWI expressed "confusion" on how to conduct and report a GWI C&P exam.
- **VA lacks a case definition:** VA has no case definition for GWI, and that hampers C&P exams, rating decisions, and treatment.
- **VA remains fixated on identifying a diagnosis to make it fit:** Some VA C&P examiners told GAO that "they could nearly always attribute a Veteran's symptoms to a diagnosable illness, which would mean the Veteran does not qualify for benefits under the undiagnosed illness presumptive category." VA's action arguable defeats the purpose as it circumvents the law.
- **VA issues unnecessary opinions:** "According to several [VA] claim rating staff we interviewed, [VA] medical examiners sometimes provide a medical opinion related to service connection when one is not necessary because the Veteran has a presumptive condition." Untrained C&P examiners thus "inadvertently deny" a claim that should be presumptively granted (*Gutierrez v. Principi*, 2004).
- **VA issues incomplete rating decisions:** When VA issued a Gulf War Veteran a GWI rating decision, VA often did not include key information on why it was denied. For example, when VA issued a Veteran a claim rating decision, VA may not have listed or considered both direct and presumptive service connection.

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VA's lack of clarity causes Veterans frustration when trying to determine the next step in the claim process, such as appealing VA's rating decision.

According to GAO, the impact of VA's challenges cause severe and adverse consequences for ill Gulf War Veterans seeking service connection and healthcare:

- **VA forces Gulf War Veterans to wait longer:** VA takes four months longer to process a Gulf War illness claim than other claims because GWI claims involve multiple and complex medical conditions.
- **VA denies Gulf War Veteran claims more often:**
 - VA's Alaska regional office denied *all* GWI claims.
 - VA granted GWI issues "about 3 times lower than all other medical conditions."
 - VA granted service connection to only 10 percent of the Gulf War claims under Undiagnosed Illness in 2015 (the 1994 law, 38 USC 1117).
 - VA granted service connection to only 22 percent of the Gulf War claims under chronic multisymptom illness in 2015 (the 2001 law, 38 USC 1118).

While the GWI laws have provided tens of thousands of Gulf War Veterans with some relief and access to VA medical care and disability compensation, an unknown number still face unreasonable obstacles before obtaining VA treatment and benefits. GAO estimated the number of completed yet unreported GWI decisions to be in the tens of thousands because of underreporting "due to unclear guidance and inconsistent data entry over time" by VA.

The bottom line for ill Gulf War Veterans is that we are often prevented from obtaining the VA treatment and benefits we earned and urgently need due to VA's problems confirmed by GAO. Thus, a large number of ill Gulf War Veterans continue suffering.

EXAMPLES OF VA CLAIM ERRORS

Bergmann & Moore, managed by former VA attorneys, has assisted several thousand Veterans with VA claim appeals over the past 14 years. Here are common VA errors in GWI claims identified by Bergmann & Moore that go beyond those identified by GAO.

- **War dates:** VA denied a Veteran's GWI claim based on deployment to Southwest Asia during 1992, implying the war had ended. VA should have granted the claim because the Gulf War continues and existing laws apply to Veterans deployed to Southwest Asia starting on August 2, 1990, and continuing through the present (38 USC 101(33)).
- **War locations:** VA denied a Veteran's claim based on service aboard a ship in the Persian Gulf, mistakenly believing the nearby body of water was not part of the war zone. VA should have granted the claim because the Persian Gulf is considered part of the geographic area of Southwest Asia (38 CFR 3.317(e)(2)).

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VA should update the definition of Southwest Asia so the tens of thousands of Veterans who deployed to Turkey, Syria, Israel, Afghanistan, and other locations since August 2, 1990, can rightfully obtain VA healthcare and benefits.

- **VA used the wrong DBQ:** VA denied a Veteran's claim because the C&P examiner relied upon one or more incorrect Disability Benefits Questionnaires (DBQ) to evaluate the Veteran's condition(s). VA should use the more appropriate GWI DBQ for GWI claims and VA should train staff to use it.

Some VA errors are simple to correct on appeal, such as knowing the correct dates and locations for the Gulf War. According to the GAO, other VA denials may require the Veteran to submit additional evidence.

However, some VA errors appear to be harmful to Veterans, such as using the wrong DBQ or taking unreasonable and unwarranted steps to diagnose GWI. The GAO report indicates that VA appears to be inappropriately developing evidence or providing an unfavorable nexus in order to deny a Veteran's GWI claim. VA's adverse actions are counter to what Congress intended and Court mandate (*Mariano v. Principi*, 2003).

In light of VA's high denial rate and errors, Bergmann & Moore encourages Veterans with situations similar to those listed above to consider appealing VA's rating decision. Veterans should seek an accredited representative to assist with filing a claim as well as when filing a Notice of Disagreement (Form 21-0958) or Substantive Appeal (Form 9).

VA USUALLY PERFORMS WELL IN OTHER AREAS

For nearly two decades, I testified in person several times in support of new laws designed to improve VA so our Veterans would receive timely and quality VA care and benefits. Congress listened and took decisive action. My statement today is the first time I have provided Congress with information about how VA maliciously and incompetently mishandled my GWI claim for nearly a quarter century. My goal is for Congress to have a rare view into the extreme challenges Veterans face.

Before I begin describing my VA claim nightmare, allow me to compliment VA medical professionals. As a former project manager working at VA's central office here in Washington, DC, and as Veteran who receives all of my care at VA, treatment for routine conditions is exemplary. VA staff are usually polite, caring, and professional. Yet my observation is that they are overworked with too many patients and not enough time, especially in order to provide care for Veterans with complex conditions. Although VA physicians continue trying, VA remains unable to provide me with an effective treatment for my GWI.

Similarly, nearly all VA claims processors are doing the best they can under difficult circumstances. However, training, staffing, and oversight must improve at regional offices. VA regional offices should focus on quality rather than on speed and production quotas.

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MY 25 YEAR VA CLAIM ODYSSEY

My VA disability claim odyssey began on July 28, 1992. I walked into a VA medical center for the first time and sought care because I was suffering from several serious medical conditions. The previous day, I called and asked VA what to do in order to receive care as an ill Gulf War Veteran. The VA clerk advised me to arrive early in the morning, bring my DD 214 discharge papers, and ask to see a physician.

Upon arrival at the VA medical center, VA refused to treat me. The VA clerk said I was not service connected and that I did not serve in the Gulf War. The clerk did not know that the military refers to the Gulf War combat zone as Southwest Asia. My DD214 confirmed I deployed to Southwest Asia and received the Southwest Asia Service Medal. The clerk insisted I was not in the Gulf War because my DD214 did not mention the Gulf War, Desert Shield, Desert Storm, Iraq, Kuwait, or Saudi Arabia. The clerk never mentioned the need to file and win a VA claim before receiving treatment.

A second VA employee who happened to walk by asked me if this was my first visit to a VA medical center. I said yes, and the second VA employee suggested I meet with someone who could explain how to file a claim and obtain VA healthcare. I then met a Veteran Service Organization (VSO) representative who explained VA's complex claim and healthcare rules. That day, the VSO and I filed my original claim, even though I was visibly suffering from a fever, sinusitis, migraine, erythromelalgia, and other conditions. Like other Veterans, I filed my VA claim in order to obtain VA medical care.

VA's poor handling of my claim could be summarized by saying, "if something could go wrong at VA, then it did." VA's significant mistakes processing my GWI claim mirror the VA errors identified by GAO's investigation. Here are examples:

- **VA transferred and lost my entire claim file:** After Congress passed the 1994 Gulf War illness benefits law, VA sought to consolidate all Gulf War claims at four VA regional offices. That didn't work out well. Then VA tried consolidating all GWI claims at a single VA regional office. That failed as well. VA's repeated transfers of my paper claim file resulted in my file disappearing between 1995 and 1999. My VSO advocate appealed and protested the transfer of my claim file to no avail. My medical conditions worsened, and my medical bills mounted. My paper records were eventually located by my VSO in 1999.
- **VA lost my C&P exams and medical records:** VA lost C&P exams and medical records needed to process my GWI claim. As a result, even when VA had my file, VA issued partial rating decisions without deciding my GWI conditions. VA deferred portions of my claim related to GWI in 1995, 1999, and 2000.
- **My VSO located my file and reported VA retaliation:** During 1998 and 1999, attorney William "Bill" Russo searched for my claim file for several months. At that time, Mr. Russo was the director of benefits at the Vietnam Veterans of

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America (VVA), my VSO advocate. He found parts of my file in four different VA regional offices. My file inexplicably contained newspaper clippings about me, records of other Veterans, and duplicate copies of my records. Missing from my file were C&P exams and other salient DoD, VA, and private medical records. After spending an entire day reconstructing my claim file, Mr. Russo told VA's regional office director the situation was the worst case of VA retaliation and mishandling of a claim he had ever seen. Mr. Russo would go on to become the Deputy Director of Regulations at VA's central office in Washington, DC. I thank Mr. Russo for his tenacious advocacy. He died in 2016.

- **VA used untrained C&P examiners:** In one example in 1992, a VA physician conducted an exam without asking me any health questions. In the ensuing appeal, VA provided a new exam and granted the condition. In another example in April 2017, an untrained VA physician conducted a GWI C&P exam. The physician used the wrong DBQ, found a diagnosis, and provided a negative nexus opinion when none was required. This is exactly what GAO concluded was wrong with VA. The physician asked me to provide my military, VA, and private medical records because the physician had not reviewed them. In a related matter, VA sent me a letter asking me to call VA by a fixed due date for a GWI C&P exam. However, VA's letter was postmarked **after** the due date.
- **VA ignored key evidence:** When rating my claim in 1993, 1995, 1999, and 2000, VA regional offices ignored probative evidence from military, VA, and private doctors. For example, my military records show the onset of my GWI while deployed to Southwest Asia and Germany during 1991. In another example, a 1999 VA Gulf War registry exam linked my GWI to toxic exposures.
- **VA admitted CUE:** In April 2000, VA made an admission of a Clear and Unmistakable Error, or CUE, in a November 1999 VA rating decision. VA erroneously established an effective date of November 1999, instead of September 1991 (I filed my claim within one year of leaving Active Duty, so the effective date is retroactive to my discharge date). The silver lining in VA's April 2000 rating decision was that VA did grant some of my conditions and opened the door to VA treatment. The remaining dark cloud in VA's April 2000 rating decision was that VA again deferred my GWI claim for a third time.
- **VA's failed Gulf War registry exam:** During a Gulf War registry exam in 2017, the VA physician was unaware of any new Gulf War research or treatments. Furthermore, the physician, who regularly conducts GWI C&P exams, confided that VA provided no training for GWI C&P exams and that a supervisor issued orders to deny all GWI claims except in cases where the Veteran was diagnosed with fibromyalgia, chronic fatigue, or irritable bowel. The physician's comments confirm what the GAO reported. I wrote a letter and brought the physician's comments to the attention of the VA medical center's director, chief of staff, and C&P director. I have not yet received a reply.

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- **Other malicious VA acts – inexplicable change of my address and release of my medical records:** VA changed my address in error to a location where I did not live. VA never explained how that happened. VA sabotaged a meeting with legislators by releasing my medical records without authorization. VA later apologized.
- **VA improperly cancelled my deferred Gulf War illness claim:** In the most egregious example of VA retaliation, VA improperly erased my deferred GWI claim from VA's computerized Pending Issue File (PIF) in September 2000. VA took action without notification or permission from my VVA advocate or me. Even though VA granted a portion of my claim and then deleted my claim from VA's electronic work queue, my GWI claim still remains pending and deferred because VA never decided it. I learned about VA's actions in July 2017 when VA provided me a copy of a VA letter dated September 2000 that contained hand written notes by VA employees improperly cancelling my deferred GWI claim.
- **My appeals were timely and written:** With the assistance of my advocate, all of my notices of disagreement and substantive appeals were timely and written. VA's actions described above are unacceptable and unconscionable. VA should have decided my pending and deferred claim at the regional office decades ago. My health continues worsening since 1991. The cost in my time and medical bills is staggering. I receive solace advocating for VA reform and assisting fellow Veterans. I am still waiting a VA rating decision from a regional office for my claim originally filed in July 1992, and in 25 years, my claim has never reached the Board or Court.

LOOKING FORWARD: SUGGESTED REFORMS

VA's concurrence with GAO represents a watershed step forward by VA in acknowledging and resolving the issue of tens of thousands of denied GWI claims. Bergmann & Moore agrees with GAO's recommendations. Specifically, VA agreed to begin mandatory VA training for medical professionals conducting GWI C&P exams, more detailed VA rating decisions provided to Veterans, and the development of a case definition for GWI.

Going beyond the GAO's recommendations, GWI disability compensation claim laws and regulations need an urgent overhaul. Congress and VA should take advantage of the disturbing new information about GWI claims in order to collaborate with VSOs and other stakeholders to improve claims processes so Veterans can receive prompt and quality VA care and compensation for service-connected conditions.

Congress should act swiftly based on the momentum created by the GAO report, VA's acknowledgement, and the testimony of advocates today. Any new legislation should provide for scientific research, medical treatment, training for claim processors at VA regional offices, training for claim examiners at VA medical facilities, an updated

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definition of Southwest Asia, and continued oversight through mandatory reporting of healthcare use and claim activity.

The most critical component of any new legislation remains VA's willingness to embrace change and understand the reasoning behind a new benefits law. In the case of ill Gulf War Veterans, the main route to free VA treatment and disability benefits comes **after** VA grants the Veteran service connection.

VA should work with VSOs so the training to implement any future laws and regulations meets the expectations of VA C&P examiners, VA claims processors, VSOs, and Veterans. As part of training VA claims processing staff about Gulf War illness claims, VA should share copies of VA's training materials with VSOs and Congress so that advocates, legislators, and Veterans have a better understanding of how to apply for and prevail on a GWI claim. This would also include describing the evidence needed, what to expect during a C&P exam, and what to look for in a VBA rating decision.

In 1992, Congress mandated public reporting on the costs of the Gulf War. GAO described how VA stopped creating and distributing the reports. I was the person, while working at VA, who created the reports in 2000. VA should resume the reports on a quarterly basis. Such reports are consistent with the "Veterans Health Care Act of 1992" in identifying Gulf War Veterans and reporting on various aspects of their VA healthcare and benefit activity (Public Law 102-585).

CONCLUSION

It is an uncomfortable truth, however, that the issue of GWI claims is here to stay for several more decades. As Gulf War Veterans age, we will file more claims, including GWI claims. This is because our conditions continue manifesting and worsening, thus revealing the true long-term cost of war and toxic exposures on our health.

In the alternative, without reform legislation, Congress should mandate that VA train C&P examiners and claims processors on the proper processing of GWI claims, reopen all denied GWI claims, and then complete adequate C&P exams and new rating decisions with retroactive dates going back to the original date of the Veteran's claim. Otherwise, the only remaining recourse may be litigation.

No Veteran should have to endure a lengthy, complex, and tortuous VA claims process. After working on this issue for 25 years, I am frequently confronted by countless Veterans who constantly share similar VA claim horror stories with me. Our goals as Gulf War Veterans remain the same today as they were in 1991, when we began falling ill due to toxic exposures while deployed to Southwest Asia or after returning home. Gulf War Veterans seek research to understand why we are ill, treatments to improve our health, benefits for those in need, training for those who assist us, and rigorous oversight and accountability of VA from our elected officials.

I am available if the Subcommittee Members or staff have questions. Thank you.