

501(C)(3) Veterans Non-Profit

STATEMENT FOR THE RECORD
PARALYZED VETERANS OF AMERICA
FOR THE
HOUSE COMMITTEE ON VETERANS' AFFAIRS
SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS
ON
"VA DISABILITY EXAMS: ARE VETERANS RECEIVING QUALITY SERVICES?"
JULY 27, 2023

Chairman Luttrell, Ranking Member Pappas, and members of the Committee, Paralyzed Veterans of America (PVA) would like to thank you for the opportunity to submit our views on the Department of Veteran's (VA) disability exams process. The Veterans Benefits Administration's (VBA) Compensation and Pension (C&P) examination process often acts as the first stop for servicemembers and veterans trying to access their earned VA benefits and health care. This is particularly true for veterans who have incurred a spinal cord injury or disorder (SCI/D) and their ability to access VA benefits without delay is critical for their care and recovery.

Any conversation about the C&P process should begin by noting that many veterans find it difficult to file even a basic claim for disability because the VA Form Application for Disability Compensation and Related Compensation Benefits form (21-526EZ) is long and contains a multitude of instructions, which makes the process confusing. This is why PVA has service officers staged throughout the country at VA's Regional Offices and the Department's 25 SCI Centers to help veterans, their families, and even VA employees navigate the Department's complex disability process. At the same time, we cannot overlook the good, often extraordinary work and efforts of so many VA employees. It is these employees, these people who most often make such a profound difference in the lives of the veterans and families we serve.

When a veteran with multiple sclerosis (MS) or amyotrophic lateral sclerosis (ALS) receives a Veterans Health Administration (VHA) conducted exam, they are normally evaluated by a neurologist, a doctor who specializes in treating diseases of the nervous system. From our experience, this greatly enhances the likelihood of getting an examination right, and significantly decreases the chance of errors.

However, in the case of VA contracted exams, a veteran with MS may be examined by a family practitioner, pediatrician, obstetrician, or other provider who may have little to no expertise with the disease. These inadequate contractor exams can result in lengthy claim processing times, VA Rating Decisions that provide a lesser degree of benefits, and necessitate the need for lengthy appeals which hurts our most severely disabled veterans and creates more work for VA at greater costs. For example, PVA is currently working with a 40 percent service-connected veteran who has been seeking service connection for his right knee and his back, secondary to his service-connected left knee since 2011. The matter has been remanded by the Board of Veterans' Appeals (Board) multiple times, with instructions in 2016 to specifically obtain an opinion from an orthopedist. It has also been appealed to the Veterans Court. There, the VA Secretary and the veteran agreed that the prior medical opinions had not been adequate for rating purposes and requested a new opinion. The Board then remanded the claim and specifically requested that an opinion be provided by an orthopedist. Instead, a nurse practitioner provided an opinion. The Board conceded the nurse practitioner was not qualified and remanded the claim again, but did not specifically request an orthopedist. This time around, an obstetrician provided the new opinion which of course, triggered additional appeals and decisions by the Board. Twelve years later, a rather simple claim by this veteran is still not resolved, but it serves as an excellent example of how convoluted the process can be when an exam is not conducted by a specialty provider. A PVA member with MS who was examined by a contractor with a specialty in orthopedic surgery produced similar outcomes, and we have many other similar examples of this happening with other disabilities.

At times, it seems these contract exam requests are being sent to any available medical provider, regardless of their practice area. This just results in challenges and delay; it's not a good use of VA's resources or anyone's time and it certainly isn't beneficial to the veteran. A contractor's inexperience with VA and lack of knowledge of veterans can adversely affect the claims process as well. Too often, we have seen contractors submit an exam to VBA, and then VBA is forced to go back to the contractor, two, three, four, or maybe even more times for clarifications on something. This also causes lengthy delays in decisions on a claim and again can result in poor decisions that must be appealed.

We agree that C&P exams completed by contractors may be sufficient for some of the more common or less severe disabilities. However, in most cases, they are inadequate for veterans with SCI/D and other complex and more significant disabilities. PVA strongly believes only VHA examiners should provide C&P exams for veterans with complex claims. This would greatly reduce errors and ensure VBA obtains everything it needs during the initial examination.

A June 2022, VA Office of the Inspector General (VA OIG) report faulted the Department for not ensuring that its contract exam vendors were held accountable for correcting errors and improving

exam accuracy.¹ The report indicated that all three of the Department's current contractors have an accuracy rate, in many cases well below the 92 percent accuracy requirement, with little to no improvement from 2017 through 2020. We understand the formula used by VA OIG may be slightly flawed because errors noted in an exam that had no relevance to deciding a claim, service connection, or the percentage of disability, counted towards a deficiency in the accuracy score. We also understand a more effective methodology is now being used and it indicates a 95-97 percent accuracy rate. That still means three to five percent of exams are inaccurate which translates into millions of veterans that may have been awarded a higher or lesser level of benefits that they deserved, or worse, had their claims denied based on inaccurate exams. VA has paid \$6.8 billion for contract exams since 2017 and as noted above, there was little to no improvement in accuracy from 2017 – 2020. Yet, and although they were reportedly suspended, we question why would VA provide monetary incentives to contractors, to improve upon the work they are already being paid to do.

VA also maintains that a Rating Veterans Service Representative (RVSR) can always send an inadequate exam back to the contractor. While this is true, it can delay a decision on a veteran's claim. Additionally, the language used in these requests is confusing and seem more like computer generated requests, than a person speaking in plain language, telling the contractor what is needed.

The Department further attempts to minimize the issue of low accuracy by stating an RVSR is required to review and consider the entire evidence of record when deciding a claim, not just the contracted C&P exam. While it's true an RVSR is supposed to review the entire evidence of record, this is not reality. C&P exams are the documents RVSRs rely on the most in deciding claims. A veteran's digital file in the Veterans Benefits Management System can have hundreds, if not thousands, of documents. Although not all of the documents are relevant to a particular claim, many are, and it's unrealistic to believe an RVSR is going to spend days pouring through hundreds of documents on one claim, when they are required to meet certain quotas.

If one of our service officers determines an exam is inadequate, we can appeal a decision. However, since implementation of the Veteran Appeals Improvement and Modernization Act of 2017 (P.L. 115-55), there are other avenues that must be taken, such as a Higher-Level Review and Supplemental Claims, before an appeal to the Board of Veterans' Appeals, if necessary. All of this takes time and resources, and can cause significant delays.

In addition to concerns about contracted exams, we also believe VA simply orders too many unnecessary exams. Under 38 U.S.C. 5125, VA can accept private medical evidence alone to support a claim for benefits, and there are many cases in which it would be much more efficient both in cost to

¹ [Contract Medical Exam Program Limitations Put Veterans at Risk for Inaccurate Claims Decisions \(va.gov\)](#)

VA and time to the veteran if they just accepted a claimant's evidence. We see cases where, at least in retrospect, there was credible private evidence and the exam looks more like they are laying the groundwork for a VA denial. Recently, we had a veteran receive an award for his heart condition based on his PTSD. VA rated the veteran based on his medical records and awarded him Individual Unemployability because he met the criteria with the new ratings. This action provided benefits for the veteran without delaying the award for exams. This could and should be happening more frequently.

Finally, there seems to be a disconnect between whoever is scheduling the exams and the experts and the veterans. It's as if the schedulers either don't know, don't care, or more likely, don't have the authority to deal with situations whenever a veteran tries to prevent being scheduled for an exam by a specialist without expertise in their claims. The question to ask is if it is unreasonable for veterans to be evaluated by someone with experience and knowledge of their condition as well as treatment options and emerging science regarding it. Again, we feel very strongly that disability claims examinations for veterans with SCI/Ds and other complex and more severe disabilities should only be conducted by VHA providers specializing in the field of medicine for the disability being claimed. In the instances where they are not, a veteran should have the right, and VA contractors should have the ability, to schedule them with a provider actually practicing in the field of medicine for the condition under consideration.

PVA would once again like to thank the Subcommittee for the opportunity to submit our views on this issue, and we would be happy to answer any questions you may have.

Information Required by Rule XI 2(g) of the House of Representatives

Pursuant to Rule XI 2(g) of the House of Representatives, the following information is provided regarding federal grants and contracts.

Fiscal Year 2023

Department of Veterans Affairs, Office of National Veterans Sports Programs & Special Events — Grant to support rehabilitation sports activities — \$479,000.

Fiscal Year 2022

Department of Veterans Affairs, Office of National Veterans Sports Programs & Special Events — Grant to support rehabilitation sports activities — \$ 437,745.

Fiscal Year 2021

Department of Veterans Affairs, Office of National Veterans Sports Programs & Special Events — Grant to support rehabilitation sports activities — \$455,700.

Disclosure of Foreign Payments

Paralyzed Veterans of America is largely supported by donations from the general public. However, in some very rare cases we receive direct donations from foreign nationals. In addition, we receive funding from corporations and foundations which in some cases are U.S. subsidiaries of non-U.S. companies.