

Statement of

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Committee on Veterans' Affairs
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With Respect To

**“Examining VA’s Challenges with Ensuring Quality Contracted
Disability Compensation Examinations”**

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Chairman Luttrell, Ranking Member Pappas, 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 testimony regarding my recent experiences and the experiences of other VFW-represented veterans in navigating the Department of Veterans Affairs (VA) contracted disability compensation examination process.

As an accredited Veterans Service Organization representative with the VFW, I have a professional and regulatory obligation to deeply understand the VA disability claims process and the nuances of VA business processes that allow for the effective delivery of VA benefits.¹ However, as a service-connected veteran who recently navigated this process for my own claims, I must also note that this process remains unnecessarily frustrating.

In the past two years, I have filed two presumptive claims related to my service in Southwest Asia. Both times I believe that VA promulgated accurate rating decisions that reflect the current extent of my presumptive health conditions. However, while my benefits may be accurate, the contracted disability exam process that helped to establish my benefit ratings was not transparent, efficient, or customer focused. At a time when VA is processing more claims than ever before, my personal experiences in navigating this process are sadly not isolated.

I will recount in detail my most recent experience with the contract exam process between April and July of 2024, but I will note that these specific frustrations similarly echo those I experienced when I filed another claim action in 2023. Through both claims, my exams have been assigned to three of VA’s four contracted vendors—meaning the negative experiences were not isolated to one vendor and were more likely indicative of systemic problems with how VA administers its contract exam program. The bottom line is that because of the unrealistic rigidity

¹ 38 Code of Federal Regulations 14.629

of VA's contracts with its exam vendors and VA's self-imposed standards of speed, whenever I have been ordered for a contract exam, the first vendor has routinely had to return my claim to VA. Thankfully, since I consistently work with an accredited representative, I have been able to ensure VA reissues its exam requests and that I am offered another opportunity.

I worry that the rigidity of the system today, and specifically the disability exam contract structure, is a holdover from the days when VA would compel veterans to appear at VA compensation and pension (C&P) clinics at the time and place of VA's choosing, under the threat of denying a veteran's benefit claim. Thankfully, VA has made considerable progress in addressing this archaic and patronizing business practice, but the VFW does not believe VA has gone far enough to modernize how it works with vendors to schedule and complete exams in a modern health care marketplace. Under the current contract, when vendors contact veterans to schedule exams, they are offered the opportunity to reschedule only one time within a certain time period or the claim will be returned to VA for processing.

During my recent claim experience, I was first auto-scheduled by one vendor for a date on which I was traveling out of the country for work. Thankfully, I worked through my accredited representative to reschedule. I finally completed my exam on April 22, but something seemed off.

The VFW was tracking VA's publication of new regulations for gastrointestinal conditions in March 2024, which would become final in May 2024. In fact, the VFW was in the middle of training our network of service officers on these new regulations and how the changes would affect claimants. With this knowledge in mind, I was surprised when I arrived for my exam and was asked questions more in line with the old regulations. Nevertheless, I sought to answer to the best of my ability, accounting for the change I knew was already underway. I also stated that my imagery was not up to date for the condition and that I would need a new colonoscopy report. I informed the clinician I had imagery scheduled with VA on July 10 that would be germane to establishing a rating for my claimed condition. At this point, I assumed my claim was on hold as VA waited for me to complete the required procedure.

Fast forward to June when I received a text message from this same vendor indicating that VA had ordered another exam for me. I contacted my representative who explained to me that based on what he could see in the Veterans Benefits Management System, VA was *likely* seeking some more information from the provider I had originally seen to make sure that the correct Disability Benefits Questionnaire (DBQ) was filed in the system. At this point, I was confident that I would not need to appear for another exam as these clarifications are fairly routine.

I was wrong. In early July, the vendor called me to schedule my appointment. Before I would commit to a date, I had a few questions. Based on what I knew about the claims process and what my accredited representative told me VA sought in its exam request, I asked what additional information the vendor needed from me. The representative on the phone did not know. I asked if the original doctor had been contacted to provide more information. Again, the representative did not know.

The representative then went on to explain that I needed to appear for an exam or my claim would be returned to VA, and that it may be processed without the information. The date she offered for my exam was July 10, which was the date of my colonoscopy. When I said I was not available that day or the following day, she told me the only other option was on July 17 with a clinician in Dover, Delaware, which is nearly two hours of travel from my home. I asked if the needed information could be obtained via telehealth. She insisted no and that I would have to drive to Dover. I said “I’m not doing that. You should return the claim to VA and I’ll work through my service officer to fix it.”

Keep in mind, I have more resources at my disposal to navigate this process than most veterans. In fact, later that afternoon I was meeting with VA Under Secretary for Benefits Joshua Jacobs and his team to talk about benefit issues. This situation was a topic of discussion and prompted a telephone call later that week with the Medical Disability Examination Office (MDEO) during which I spoke about the challenges with the current C&P exam contracts and invited dialogue on how to offer veterans more agency in the process.

The following week, I received a text message notification from another vendor to which my exam was assigned. When I was contacted to schedule an appointment, I was once again met with a similar challenge. July 10 was offered for my exam date. I responded that I was unavailable and I would partner with my accredited representative to figure it out. Thankfully, I was already working directly with MDEO. Again, this is a luxury most veterans do not have. I arranged to complete my exam at the walk-in claims clinic that the VFW hosted at our national convention. The exam was completed on Sunday, July 25, and I had a final rating by Thursday, August 1.

Tragically, mine is not an isolated incident. Recently, the VFW worked with Marine Corps veteran Dean Davis on a supplemental claim, challenging a prior VA denial for aggravation of a pre-service traumatic brain injury. In the supplemental process, Mr. Davis was ordered to appear for two appointments with a neurologist. During the second appointment, he relayed to me that the doctor told him, “I have no idea why you’re back here. I gave VA everything they asked for!”

More than a month after this appointment, Mr. Davis received notification from a vendor that had been assigned to complete an exam for him. Confused and frustrated as to why he would need to report for a third time, he reached out to us. Thankfully, our team was able to determine that VA had simply ordered another medical opinion from the same doctor that Mr. Davis had seen previously. There would be no physical appointment. However, this did not stop VA from sending him a survey to evaluate his recent C&P exam experience.

The next example is the Independence Fund recently reaching out with a potential referral for a veteran living in Arizona for whom VA ordered an exam at her old address in Pennsylvania. When the veteran notified the vendor that she had moved to Arizona, she was similarly told that the vendor had to return the claim to VA and that VA would contact her at a later date to schedule. After more than 90 days had passed with no follow up from VA, she contacted the Independence Fund. When our accredited representative was finally able to look in the claims

record, we were able to compel VA to order the new exams. Otherwise, her claim would have languished in VA's National Work Queue.

These are just a sampling of veteran experiences, including my own, that elucidate VA's problems with administering efficient and accurate contract exams. From a policy perspective, the VFW has been concerned about this ever since VA launched its Decision Ready Claims process in 2016 that was designed to give veterans more agency over the exam process, but instead overpromised 30-day claims to veterans who filed with an accredited representative.

The concept of the program was that the veteran would work with an accredited representative on an Intent to File to bookmark an effective date with VA, then complete all development of the claim to include scheduling and completion of any required exams. When the claim was sufficiently developed, the representative would formally file and VA would commit to processing the claim within 30 days.

However, the message that veterans received was that accredited representatives could obtain a 30-day claim from start to finish. Shortly after this program launched, we visited Georgia Department of Veterans Services and heard firsthand from the field about how frustrated veterans were with this concept. But they were not frustrated with VA, they were frustrated with the accredited representatives for being unable to deliver on VA's promise. Fast forward and we worked with VA to sunset this specific program, but continued to call for veterans to have more agency over the scheduling and completion of their exams.

During the COVID-19 pandemic, VA demonstrated that it could do this when it ordered vendors to put on hold exams for veterans who were unable or unwilling to report because of COVID-19 concerns. When we returned to normal operations in 2021, the VFW testified before the Senate Committee on Veterans' Affairs regarding lessons learned from COVID-19. We called on VA to once again allow veterans to drive the exam process, if they so choose.²

Unfortunately, we were met with strong opposition from VA's myopic concept of timeliness. The VFW maintains today as it did in 2021 that just because something is fast does not mean it is timely. Something that is timely must also be useful or accurate. Rushed, inaccurate exams that do not factor in the personal needs of veterans or that result in persistent rework cannot be considered timely.

This subcommittee is familiar with VA's arbitrary 125-day timeliness standard to process claims. However, this standard materialized seemingly out of nowhere during a 2010 press conference when then-VA Secretary Eric Shinseki committed that VA should be able to complete claims within 125 days. This may have been a noble goal in 2010, but the landscape has fundamentally changed since then. Today, the average claim for a veteran who served in the Global War on Terrorism includes nine conditions³, which is nearly double from the time that Secretary

² Senate Committee on Veterans' Affairs, Supporting Disabled Veterans: The State of Claims Processing During and After COVID-19, May 12, 2021, <https://www.veterans.senate.gov/2021/5/supporting-disabled-veterans-the-state-of-claims-processing-during-and-after-covid-19>

³ Veterans Benefits Administration, Annual Benefits Report, 2023, p. 74, <https://www.benefits.va.gov/REPORTS/abr/docs/2023-abr.pdf>

Shinseki made the 125-day commitment.⁴ Frankly, this is an unrealistic goal when one considers what the veteran and the exam vendor must do to complete all required tasks for VA to sufficiently rate a claim in 125 days.

Again, I will draw on my personal experience to explain this shortcoming. My claimed condition not only required me to attend a general health interview with a clinician, but also to complete related laboratory work and provide updated imagery. When comparing my personal and professional obligations with the availability of these health care services in the marketplace, completing all of this within 125 days is a difficult task. For example, my required colonoscopy was scheduled within the VA health care system outside of the claims process and was scheduled more than three months ahead of time. I knew my claim could not be completed without this procedure.

Nevertheless, VA rushed its evaluative exam process to its own detriment. First, because of the unrealistic timeline my exam request was returned to VA three times before it could be completed. This means that vendors wasted time and money seeking to schedule my exams and mailing me the required notifications. Next, the rushed process meant that my first examiner did not consider the recent regulatory changes and completed an outdated DBQ that would need to be reworked no matter what. Finally, the rush to complete this rework would have again excluded an up-to-date report on imagery because the imagery was not yet completed.

Let me be clear. At no point in my recent process did I ever consider my claim *backlogged*. But VA certainly did, putting stress on two vendors to complete a flawed exam process, and putting stress on me as the veteran navigating the system. The exam process as it is currently constructed is at best sloppy and at worst wasteful. However, it makes sense that VA works this way because this is what VA measures and reports every Monday morning,⁵ and frankly the only metric to which Congress has been able to hold it accountable for meeting timeliness goals.

Meanwhile, accredited representatives and contract examiners are “left holding the bag” when veterans become frustrated or disillusioned by the process. When vendors cannot reasonably work with veterans to complete exams, when examiners and accredited representatives lack access to key information on the exam process, or when VA orders rework, veterans first hold their representatives and the examiners responsible for the deficiency, not VA. Since I am accredited, I knew what to do when I faced this situation with my own claim. But I also know from years of working with veterans that this is where we lose their trust as advocates.

In this fiscal year alone, VA reported to the VFW that more than 217,000 exams were returned to VA as “no-shows.” In July, the Veterans Benefits Administration testified before this subcommittee that it continues to address rework “in direct response to data showing frequent occurrence of exam clarifications requires before claims can be decided...”⁶ I presume this

⁴ Veterans Benefits Administration, Annual Benefits Report, 2010, p. 20, https://www.benefits.va.gov/REPORTS/abr/docs/2010_abr.pdf

⁵ Veterans Benefits Administration, Monday Morning Workload Report, 2024 https://www.benefits.va.gov/REPORTS/detailed_claims_data.asp

⁶ House Veterans’ Affairs Subcommittee on Disability Assistance and Memorial Affairs, Is the Veterans Benefits Administration Properly Processing and Deciding Veterans Claims?, July 23, 2024 <https://veterans.house.gov/calendar/eventsingle.aspx?EventID=6514>

means that many of the reported 1.1 million beneficiaries who have filed claims this year shared experiences similar to mine. Furthermore, I speculate that other claimants just accepted this unreasonable process as part of the larger VA claim experience, further eroding trust in the system.

The VFW's request for this subcommittee today is to change this paradigm. We call on the full committee to work alongside VSOs, exam vendors, and VA to better craft accountability metrics that accurately reflect the total exam experience, as well as ensure that all entities that play a legal role in the process—VA, contract examiners, and accredited representatives—have consistent and clear access to all pertinent information to develop and process claims.

The VFW also once again asks VA to provide greater agency to veterans in the exam process, which is something that could easily be accomplished at the point of application or within the structure of VA's contracts. We have consistently invited these discussions over the past eight years because this is what veterans expect. We have spoken to vendors who agree this would improve efficiency, satisfaction, and reduce waste. At a time when VA is processing more benefits than ever before, we have the responsibility to make this process as user-friendly as possible.

While the stories we shared today are certainly frustrating, I must note that VA is really working aggressively to deliver benefits and should be commended for this. But we must come together to consistently modernize the process and confidently dispose of archaic norms that never served the best interests of our veterans.

Chairman Luttrell, Ranking member Pappas, this concludes our testimony. I am happy to answer any questions you 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 2024, 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.