

**STATEMENT OF  
JOHN WILSON  
ASSISTANT NATIONAL LEGISLATIVE DIRECTOR  
OF THE  
DISABLED AMERICAN VETERANS  
BEFORE THE  
COMMITTEE ON VETERANS' AFFAIRS  
SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS  
UNITED STATES HOUSE OF REPRESENTATIVES  
FEBRUARY 3, 2010**

Mr. Chairman and Members of the Subcommittee:

I am pleased to have this opportunity to appear before you on behalf of the Disabled American Veterans (DAV) to address the "Implementation and Status Update on the Veterans' Benefits Improvement Act (P.L. 110-389)." In accordance with our congressional charter, the DAV's mission is to "advance the interests, and work for the betterment, of all wounded, injured, and disabled American veterans." We are therefore pleased to support various measures insofar as they fall within that scope.

DAV was pleased with Section 101 which sought to make correspondence more understandable and useful. We understand that VA has been drafting regulations with a focus on various legal complexities. They are also concerned with any potential impact on their ability to reduce their pending claims inventory or backlog. We are also concerned, however, that a September 2009 decision by the United States Court of Appeals for the Federal Circuit may have an impact on this effort.

The September 2009 Federal Circuit decision overturned the notification requirements in *Vasquez-Flores*. The Court ruled that VA is not required to provide veteran-specific notification in order to comply with 38 USC 5103(a).

The Court's conclusion was:

As in Wilson, the arguments made by the veterans in this case "overlook[] the many statutory and regulatory provisions that do apply to VA's actions after an initial RO decision." 506 F.3d at 1061. These provisions ensure that the veteran will receive "notice as to why his claim was rejected and an opportunity to submit additional relevant evidence. Indeed, the existence of other statutes . . . requiring specific notice at other points during the claim adjudication process strongly suggests that section 5103(a) was not intended to sweep as broadly as appellant contends." Id. We conclude that the notice described in 38 U.S.C. § 5103(a) need not be veteran specific under Wilson and Paralyzed Veterans.

We are hopeful that VA will continue its work as specified in this section of P.L. 110-389 on clarifying the content of notices and not use this as a basis to continue with generic pre-determination notifications.

Section 104 required VA to submit a report to Congress describing the progress of the Secretary in addressing the causes of variances in compensation payments for veterans with service-connected disabilities. The contract was awarded to the Institute for Defense Analysis and a workgroup was established to ensure a proper analysis was conducted. DAV is very interested in the results of the report, which were due to Congress by October 2009.

Section 106 added osteoporosis to disabilities presumed to be service connected in former prisoners of war (FPOWs) with post-traumatic stress disorder. DAV was pleased with the final rule incorporating a determination by the Secretary that a presumption of service connection for osteoporosis in FPOWs will be established irrespective of the presence of PTSD as indicated in the testimony given by Mr. Walcoff, VA Deputy Under Secretary for Benefits, before this Committee on June 18, 2009.

Section 212 added a new section 5121A entitled “Substitution in case of death of claimant,” to title 38, providing that if a claimant dies while his or her claim or appeal for any benefit is pending, a person who is eligible to receive accrued benefits can request to be substituted as the claimant to continue the claim. The DAV supports the provisions of section 212 that pertain to the management of claims for accrued benefits upon the death of a claimant.

Section 214 established the Advisory Committee on Disability Compensation. This eleven-member committee has met each month since its first meeting in November 2008. The Advisory Committee on Disability Compensation focused on the necessity and methodology of updating the VA’s Schedule of Rating Disabilities or VASRD; transition compensation adequacy and sequencing for service members moving to veterans’ status; and quality of life compensation.

The importance of a systematic review and update of the VASRD, in our view, is a priority, as it is the source of all disability compensation ratings. It is a rating scheme that addresses illnesses and conditions that run into the hundreds, and as such, should reflect the most recent medical findings in each and every case. DAV agrees with the Advisory Committee’s assessment that a systematic process is lacking and that one is a necessity. The Committee offered the following recommendations, with all of which we agree:

- (1) The Deputy Secretary of the VA should be tasked with providing oversight of the VASRD process, and of ensuring that the Veterans Health Administration (VHA) and Office of the General Counsel (OGC) are fully integrated in the Veterans Benefits Administration’s (VBA’s) process;
- (2) Immediately increase staff at the VBA to nine full-time employees (FTE) for the purpose of continuously reviewing and updating the VASRD. The staff should include a coordinating administrative person and two sub-teams comprised of one medical expert, two legal specialists, and one administrative support staff each. This staff should be

assigned to the Compensation and Pension Service (C&P) for administrative purposes; and

- (3) As part of its new role as full partner in the VASRD review process, VHA must establish a permanent administrative staff to participate in VASRD review. The VHA administrative staff should include at least one permanent party medical expert. This staff member should have the authority to liaise with VBA, assign medical staff from VHA to participate in VBA body system reviews, and to coordinate with other medical experts as appropriate.

Staffing within the VHA and VBA must be allocated towards this task. It is a positive step to include the medical expertise from the VHA into this process. Although previous sources of expertise such as the Institute of Medicine contributed to this body of work, the experiential expertise that VHA professionals will bring to the discussion, with a decades-long role in providing medical care to veterans, should prove invaluable to this endeavor and well worth the additional staffing.

The various stakeholders must also have a voice in this process. Such a collaborative effort by all parties helps to dispel any misperceptions and missteps.

Additionally, VA's leadership must ensure oversight and successful implementation of this important recommendation. It was anticipated that VA's commitment to the systematic updating of the VASRD would have carried forward and been reflected in its strategic plan. Is not the VASRD the key source of all disability ratings? However, a search of VA's fiscal year (FY) 2006-2011 Strategic Plan finds no mention of the VASRD. The need for an update of the VASRD is instead referenced in the FY 2008 Performance and Accountability Report, as a result of a U.S. Government Accountability Office (GAO) update to its High-Risk Series (GAO-07-310), GAO High-Risk Area #1: Modernizing Federal Disability Program. The VA would be well served to add the very language of this section of the Advisory Committee's report to its Strategic Plan as its map for the systematic updating of the VASRD.

As noted earlier, while we agree that a rewrite of sections of the VASRD is appropriate, DAV would oppose an approach that required a complete revamping of the 1945 rating schedule. Generally, the VASRD has served America's disabled veterans quite adequately. It incorporates a policy of "average impairment," and that policy has treated all veterans with like disabilities equally and fairly, in spite of age, education or work experience. It also encourages disabled veterans to seek vocational rehabilitation training in order to become a more productive wage earner without penalty for doing so. Understandably, the VASRD has been modified and upgraded many times when advances in medical science dictate a change in a particular disability rating might be necessary, or additions to the Schedule have been incorporated to cover injuries, infirmities and illnesses unique to some theatre of operations. We agree with the Advisory Committee that the VASRD be updated in a systematic fashion, based on sound medical principles, provided there are no wholesale changes and, when change is necessary, it is based on the above principles.

We also agree with the body system prioritization the Committee offers, beginning with mental health disorders. It is essential that different criteria be formulated to evaluate the various mental disorders under the appropriate psychiatric disorder. Criteria for evaluating mental disorder under title 38, Code of Federal Regulations, Section 4.130, are very ambiguous. For example, schizophrenia and other psychotic disorders, delirium, dementia, and amnestic and other cognitive disorders, anxiety disorders, dissociative disorders, somatoform disorders, mood disorders, and chronic adjustment disorders, are all evaluated using the same general rating formula for mental disorders. The Diagnostic and Statistical Manual for Mental Disorders (DSM IV) specifically lists different symptoms for posttraumatic stress disorder, schizophrenia, and other psychiatric disorders. One veteran service connected for schizophrenia and another veteran service connected for another psychiatric disorder should not be evaluated using the same general formula. Therefore, the DAV supports amendment of title 38, Code of Federal Regulations, section 4.130, to formulate different criteria to evaluate the various mental disorders under the appropriate psychiatric disorder and is pleased to see the Advisory Committee place mental disorders as the first to be considered in this systematic review.

Section 221 required VA to carry out two pilot programs. The first is a one-year pilot program to assess the feasibility and advisability of providing expeditious treatment of fully developed compensation and pension claims no later than 90 days after the date the claim is submitted. VBA sent an all-station letter implementing the pilot on December 11, 2008, which identified the ten regional offices participating in the pilot. The letter directed that the claimant and/or representative must submit, along with the claim, an indication that the claimant does not intend to submit any additional information or evidence in support of the claim, and does not require additional assistance with it. The claim must be accompanied by a fully developed claim (FDC) certification signed and dated by the claimant and/or representative. Additional development will not be needed, other than scheduling a VA examination or obtaining records in the constructive custody of the federal government. A contract was awarded to the Center for Naval Analyses (CNA) to review and report on results of the pilot. DAV is interested in the results of this pilot, the report of which was due to Congress on December 9, 2009.

The second pilot was to assess the feasibility and advisability of providing a claimant and/or representative with a checklist containing information or evidence required for the claimant to submit to substantiate the claim will result in more frequent and timelier submissions of evidence. An all-station letter implementing the pilot was issued on December 11, 2008, which identified the four regional offices participating in the pilot. The Center for Naval Analyses was awarded the contract for preparing an analysis and report upon the completion of this project. DAV is interested in the results of these pilots, reports of which were due to Congress by December 9, 2009.

Section 223 directed the Comptroller General to report to Congress VA's Dependency and Indemnity Compensation (DIC), addressing the current system for paying DIC to survivors, the current rates; an assessment of the adequacy of DIC payments in replacing the deceased veteran's income; and recommendations to improve or enhance the effects of the DIC payments in replacing the deceased veteran's income. We look forward to reviewing the findings and recommendations.

Section 224 directed the Secretary of VA to enter into a contract with an independent third-party entity to conduct an assessment of VBA's quality assurance program and issue a report no later than October 2011. The contract was awarded to the Institute for Defense Analysis (IDA). While VA leadership may stress quality, and agree that it is "absolutely a requirement for successful performance," what employees are compensated for is quantity based on a work credit system.

In March 2009, the VA's Inspector General discovered that the VA was making more mistakes than it reported. The internal investigation found that nearly one out of four files had errors. That is 200,000 claims that "may be incorrect."

Although quality may be emphasized and measured in limited ways, as it currently stands, almost everything in the VBA is production driven. Employees naturally will work towards those things that enhance compensation and currently that is production. Performance awards are based on production alone. They should also be based on demonstrated quality. However, in order for this to occur, the VBA must implement stronger accountability quality assurance measures.

What does VBA do to assess the quality of the product it delivers? The quality assurance tool used by the VA for compensation and pension claims is the Systematic Technical Accuracy Review (STAR) program. Under the STAR program, VA reviews a sampling of decisions from regional offices and bases its national accuracy measures on the percentage with errors that affect entitlement, benefit amount, and effective date. However, samples as small as 20 cases per month per office are inadequate to determine individual quality.

With STAR samples far too small to allow any conclusions concerning individual quality, rating team coaches who are charged with reviewing a sample of ratings for each RVSR each month. This review, if conducted properly, should identify those employees with the greatest success as well as those with problems. In practice, however, most rating team coaches have insufficient time to review what could be 100 or more cases each month. As a result, individual quality is often underevaluated and employees performing successfully may not receive the recognition they deserve and those employees in need of extra training and individualized mentoring may not get the attention they need to become more effective.

The results of visits by the VA's Office of Inspector General (VA OIG) to six VAROs in 2009/2010 certainly underscore the need for a comprehensive quality reporting mechanism. The VA OIG is well placed to conduct such operational assessments. It is evident to DAV that the STAR program uses too small a sampling size to provide any significant trend analysis. Rating team coaches, burdened with a cumbersome claims management system and massive claims inventory, are hard pressed to review sample ratings monthly. Were this the norm, what mechanisms exist to capture this data at a national level? The results of these visits point to the need for a Quality Assurance staff at each VARO that reports its efforts to the VBA.

VA OIG Reasonable Assurance of Compliance for Calendar Year 2009-2010						
VA Regional Offices	Nashville	Wilmington	Roanoke	Anchorage	San Juan	Baltimore
<b>Claims Processing</b>						
Haas	No	No	No	No	Yes	No
PTSD	No	No	Yes	No	No	No
TBI	No	Yes	No	No	No	No
Diabetes	Yes	No	No	No	No	No
<b>Data Integrity</b>						
Date of Claim	No	No	Yes	No	Yes	No
COVERS	Yes	No	Yes	No	Yes	No
<b>Management Controls</b>						
SAO	Yes	Yes	Yes	No	No	No
STAR	No	Yes	Yes	No	No	No
Date Stamp Accountability	Yes	Yes	Yes	No	No	No
CPI	No	Yes	Yes	Yes	Yes	Yes
<b>Information Security</b>						
Mail Handling Procedures	No	Yes	No	No	No	No
Destruction of Documents	No	No	No	No	No	No
<b>Public Contact</b>						
IRIS	No	Yes	No	No	No	No
Congressional Inquiries	Yes	No	Yes	No	Yes	No
Fiduciary	No	No	n/a	No	No	No

DAV looks forward to the IDA report on VBA's quality assurance program, due October 2011.

Section 225 required VA to develop skills certification examination criteria for VBA employees and managers responsible for processing compensation and pension claims. VBA's decision review officers (DROs) and coaches (Supervisory VSRs) were designated to participate in testing. A contract was awarded to the Human Resources Research Organization (HumRRO). We have long advocated for better training in VBA. The DAV has maintained the preeminent

training program throughout the VSO community for many years, which many other organizations have adopted. Training is tied directly to quality—the DAV would welcome the opportunity to assist the VA in developing such a program.

Section 226 tasked VA with conducting a study on the effectiveness of the current employee work credit system and management system within VBA, which is used to measure and manage the work production of employees who handle compensation and pension claims. The study will also evaluate more effective means of improving performance. The contract was awarded to the Center for Naval Analyses in March 2009. DAV has long advocated for a more stringent system of accountability. Any improvements in the work credit system, aimed at increasing accuracy and accountability, will be less than effective if equal or coinciding changes are not made in VA's quality assurance practices in conjunction with those of the work credit system.

Section 227 required VA to conduct a review of information technology (IT) in VBA concerning compensation and pension benefits, and to develop a comprehensive plan for the use of IT technology in processing claims for the purpose of reducing subjectivity, avoidable remands, and regional office variances in disability ratings for specific disabilities. A full report is due to Congress by April 2010.

Contrary to some beliefs, the majority of time spent by VA on disability claims is actually spent in development of the case for a rating decision. This includes receiving the claims by VA, establishing the claim in VA's current computer systems, and developing the evidence to support the claim. Evidence development, whether in the form of gathering military records from the Service department or the Records Processing Center, private health records, VA health records, VA or private medical opinions, and stressor verification through the U.S. Army and Joint Services Records Research Center consumes the vast majority of the claims-processing time. Therefore, any viable electronic claims-processing system implemented with real expectations of shortening the claims process must focus on digitizing all archived data locations and automating all VA development functions leading up to the rating decision.

We are hopeful that the report will put forth a broad and over-arching plan with reasonable milestones outlining the technology identified and the manner in which such technology would be utilized. Once complete, the groundwork would be laid for VA to coordinate with various entities, *i.e.*, Congress, Veterans Service Organizations, Department of Defense, etc., to turn the plan into reality. The DAV would welcome the opportunity to work with the Agency, to include any contractors, in order to assist in the development of this system.

This concludes my testimony regarding Implementation and Status Update on the Veterans' Benefits Improvement Act (P.L. 110-389). I look forward to any questions the Committee may have.