

**STATEMENT OF
JOHN L. WILSON
ASSISTANT NATIONAL LEGISLATIVE DIRECTOR
OF THE
DISABLED AMERICAN VETERANS
COMMITTEE ON VETERANS' AFFAIRS
SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
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Mr. Chairman and Members of the Subcommittee:

On behalf of the Disabled American Veterans (DAV) and our 1.2 million members, all of whom are wartime disabled veterans, I am pleased to be here today to testify before the Subcommittee on Disability Assistance and Memorial Affairs and address the implementation of the Integrated Disability Evaluation System (IDES). DAV is actively engaged in providing claims assistance to military members before they leave active duty with our 30 Transition Service Officers (TSOs) assisting over 55,900 service members in 2011 and our 250 National Service Officers (NSOs) representing over 259,000 veterans, their families and survivors for that same period.

IDES is the result of a recommendation of several commissions, including the Veterans' Disability Benefits Commission,¹ and the President's Commission on Care for America's Returning Wounded Warriors, which stated that the "DOD and VA should create a single, comprehensive, standardized medical examination that the DOD administers. It would serve DOD's purpose of determining fitness and VA's of determining initial disability level."²

The Disability Evaluation System (DES) pilot project was launched in 2007 by the Department of Defense (DOD) and the Department of Veterans Affairs (VA). Using lessons learned from that pilot, the legacy DES began the transition to IDES in October 2010 to include a total of 140 locations, with the goal of expediting the delivery of VA benefits to all out-processing military members.

A comparison between the DES pilot and legacy DES found Active Component military members completed the pilot in an average of 289 days, and Reserve Component military members completed it in an average of 270 days, compared to a legacy DES average of 540 days. Surveys revealed significantly higher satisfaction among DES pilot participants. On July 30, 2010, the DOD Senior Oversight Committee co-chairs directed that IDES expand worldwide.³

The legacy DES was replaced with the IDES in four stages⁴ and was fully deployed by October 2012.

¹ Veterans' Disability Benefits Commission, October 2007, page 376

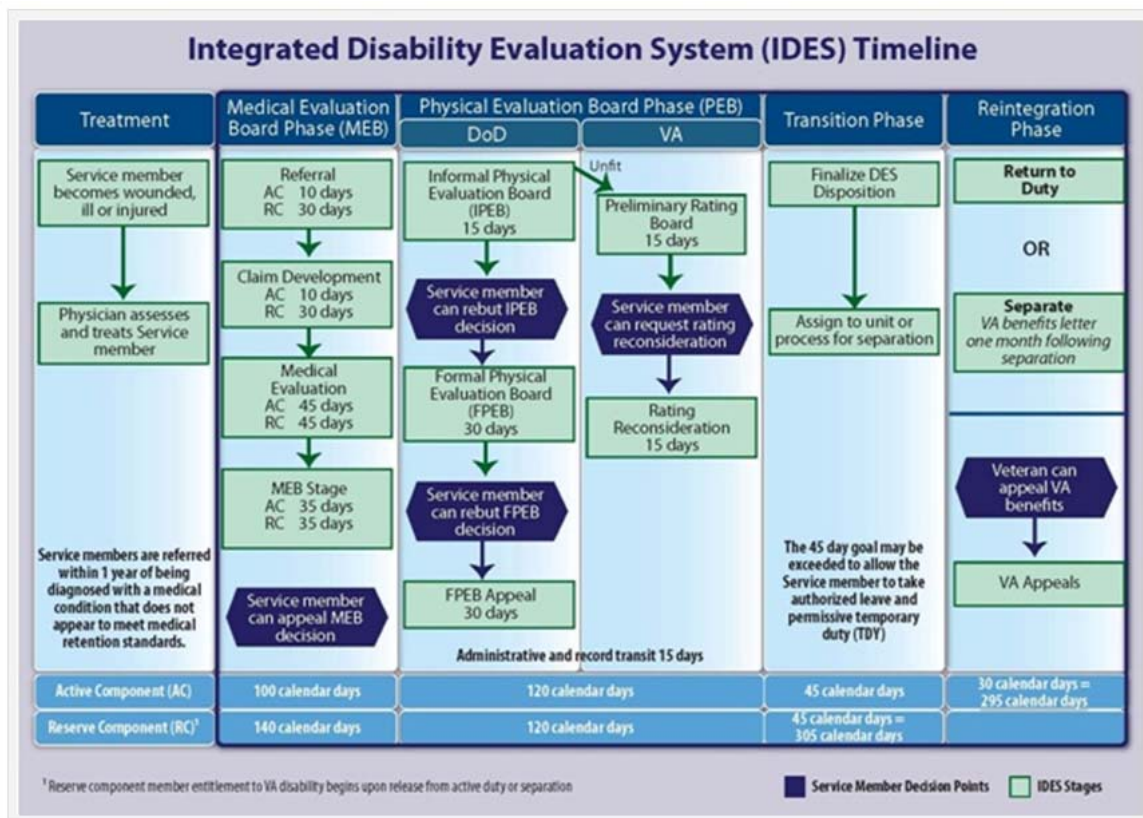
² The President's Commission on Care for America's Returning Wounded Warriors (July 2007), page 7.

³ *Department Of Defense Task Force On The Care, Management, And Transition of Recovering Wounded, Ill, And Injured Members of the Armed Forces*, Disability Evaluation System, page D-34.

⁴ Statement of John R. Campbell, Deputy Under Secretary of Defense (Wounded Warrior Care and Transition Policy), Department of Defense, before Senate Committee on Veterans' Affairs Hearing on Review of the VA And DOD Integrated Disability Evaluation System (November 18, 2010).

- Stage I-West Coast and Southeast (October–December 2010)—28 Sites
- Stage II-Mountain Region (January–March 2011)—24 Sites
- Stage III-Midwest and Northeast (April–June 2011)—33 Sites
- Stage IV-Outside Continental United States (OCONUS) (July–September 2011)—28 Sites
- Total IDES locations when complete: 140

Under this system, military members are referred to IDES when their continued service is curtailed as a result of a physical or mental health condition and they are placed on a medical profile making them ineligible for deployment or unable to carry out the duties of their rank or military specialty. The following chart depicts the revised time lines for each step of the IDES process:



As a result of treatment and being on medical profile, military members are evaluated by a Medical Evaluation Board (MEB), which is typically comprised of at least two physicians. If the MEB determines that the member has a medical condition that is incompatible with continued military service, an MEB Narrative Summary is prepared and the case is referred to a Physical Evaluation Board Liaison Officer (PEBLO).

PEBLOs guide service members through the IDES process to ensure they are aware of the options available to them and to help with the many decisions they need to make while still in

⁵ IDES Trifold Brochure

on active duty. The PEBLO compiles administrative data, informs military members of the IDES process and the MEB, and then refers them to the VA Military Services Coordinator (MSC).

The VA MSC then meets with the military members to advise them about the next phase of the IDES process, assist in completion of documentation, establish a formal VA disability claim, and initiate case development. The VA MSC requests the appropriate VA medical examinations, monitors their progress, provides copies of the completed examination reports to the PEBLO, and completes any additional development actions as needed.

Once the medical examinations are completed, the VA MSC provides them to the PEBLO and the VA Disability Evaluation System Rating Activity Site (D-RAS) which prepares the proposed disability rating. The PEBLO incorporates the medical examination results in the IDES case file and provides it to the MEB convening authority. The MTF then conducts an MEB and provides the results back to the PEBLO, including the results of the MEB's response to any rebuttal of the member about the MEB findings. The PEBLO then provides a copy of the MEB findings, to include the completed VA medical examination results, to the military member and forwards the case to the PEB administrator if the MEB did not return the military member to duty. The PEB administrator prepares and provides the member's case to the Informal PEB (IPEB).

The IPEB is typically comprised of a two- or three-member board. The IPEB adjudicates the case and requests the D-RAS provide the proposed ratings for the military members' conditions that the IPEB has determined to be unfit. The D-RAS prepares the proposed disability ratings, and reconsideration of the proposed ratings, if the military member requested this. Once all information is received, the IPEB decides whether the member can continue in the military. If so, they are designated "fit" and returned to duty. If not, they are found "unfit." There are three broad types of medical separations the member can receive as a result of being found unfit: separated without severance pay, separated with severance pay, or retirement.

Once the military member is informed of the IPEB's decision, they can either accept those findings or appeal the decision to the Formal Physical Evaluation Board (FPEB). The FPEB is comprised of a three-member board, two personnel officers and a physician. They review all the information that the IPEB had, with the added feature of the member being able to personally appear before the FPEB and offer additional evidence. The FPEB then holds a hearing, weighs the prior evidence, the member's testimony as well as any new evidence presented, and renders its recommendation. The member can accept the decision of the FPEB, or request reconsideration of the proposed ratings. Just as with the IPEB, there are three broad types of medical separations the member can receive: separated without severance pay, separated with severance pay, or retirement.

Military members have a final appeal option of the FPEB findings regarding fitness for duty through all subsequent levels allowed by their branch of service, such as the Department of the Navy Council of Review Boards and the Department of the Air Force Personnel Council.

The three types of medical separations, separated without severance pay, separated with severance pay, or retirement, can result in several types of medical discharges. Specifically,

those who receive a disability rating of 20 percent or less receive a Discharge With Severance Pay or DWSP. Those whose medical conditions were found to exist prior to military service and found unfit can be “discharged under other than Chapter 61, title 10 or (DUOT) without disability compensation if their conditions existed prior to service and were not permanently aggravated through military service. Those who receive a disability rating of 30 percent or more may receive Permanent Retirement, or be placed on the Temporary Disability Retired List and reevaluated at least every 18 months until their conditions become stable with a final disability rating decision rendered at the five year point. An exception would be mental disorders due to traumatic stress on active duty which require re-evaluation within six months after discharge, if assigned a disability rating of not less than 50 percent.

While DAV is generally pleased with the IDES, we are concerned about certain aspects of the program. One area is service members participating in IDES not having ready access to representation from a veterans service organization (VSO) in the same manner as they did under the legacy DES.

The issue of access to counsel to advise military members on the VA disability claims process was cited as a concern by the Recovering Warrior Task Force (RWTF). The RWTF is charged with conducting an assessment of the effectiveness of DOD programs and policies for Recovering Warriors (RWs). In recommendation 19, the RWTF found during RWTF onsite visits that legal personnel indicated that they were greatly understaffed. The Army, Navy, and Marine Corps provide legal counsel for both MEB and PEB. The Air Force provides specific legal counsel only for the PEB. Air Force base level legal counsel can address IDES issues prior to PEB. However, the Air Force is the service with the lowest satisfaction with legal counsel and the only service who’s IDES participants were not more satisfied than their legacy DES participants. These survey results reinforce the importance of providing legal counsel for the MEB as well as the PEB.⁶ The relationship between access to legal counsel and satisfaction with the IDES process is clear. Despite survey results demonstrating the value of having legal counsel available throughout the disability evaluation process, the majority of RWTF focus group participants said they lacked personal experience with or knowledge of these specialized legal resources.⁷

Most military members undergoing the discharge evaluation process may not be aware of the complexities of the disability adjudication and retirement systems. As a result, they may be accepting PEB decisions that are not in their best interest and/or the benefits they receive may be less than what they would have been had they understood the long-term consequences of their decision to accept a particular PEB decision. As stated in the latest RWTF report, “Service members going through the IDES process often do not have a clear idea about where they are going and what their futures hold.”⁸

Most service members may not know how complex the IDES disability adjudication is and we believe their best interests would be served if they had access to the free assistance from certified representatives from VSOs who can not only provide them with a full understanding about the process and their rights but also act as their advocates. DAV, in accordance with DAV

⁶ DOD Recovering Warrior Task Force Report, September 2, 2011, page 22.

⁷ Ibid.

⁸ Ibid, RWTF Service member focus group results. March/April 2011, page 43.

Resolution 177, and also with the other co-authors of *The Independent Budget* has urged the DOD and VA to address this observed gap in IDES and expand VSO access.

DAV was actively engaged in the legacy DES but VSOs were excluded when the program was redesigned and replaced with IDES. Under the legacy DES, our TSOs represented 282 military members before DOD's Physical Evaluation Boards from July 2008 to June 2009 but those numbers have declined to 92 from July 2009 to June 2010 and to 22 from July 2010 to June 2011. This change was based on the DOD and VA's focus on speeding the delivery of benefits so they could be placed in the hands of separating military personnel closer to the time of their discharge. Just as with the larger disability claims process and its current focus of "breaking the back of the backlog," IDES is similarly focused. It is our view that while speed is an important factor, any claim, whether while on active duty or as a veteran should be done right the first time with an emphasis on timeliness and rating decision accuracy.

DAV brings vast experience and expertise about claims processing with our service officers holding powers of attorney for hundreds of thousands of veterans and their families. Our NSOs and TSOs continue to be actively engaged in informing military members of their eligibility for VA and DOD benefits through briefings at Transition Assistance Program classes. We also provide assistance to those who request accelerated receipt of their VA disability benefits under VA's Benefits Delivery at Discharge (BDD) and Quick Start. To participate in BDD the military member must apply within 180 days of discharge but no less than 60 days. If they are closer than 60 days from separation then they can use Quick Start. We assisted over 55,900 military members in 2011 under these three programs. As a result, DAV and other VSOs play an integral part in the claims process and undeniably make the VA's job easier by helping veterans prepare and submit better claims, requiring less time and resources for them to be developed and adjudicated. If provided broader access, we can make the DOD's job easier as well by ensuring military members going through IDES do have a clear idea about where they are going and what their futures hold.

There has been some positive movement that partially addresses VSO access. The VA Integrated Disability Evaluation System Implementation Guide states that VA Military Services Coordinators (VA MSCs) will "explain the availability of Veterans Service Organizations and provide a VA Form 21-22, Appointment of Veterans Service Organization Claimant's Representative, if the Service member expresses interest in this resource."⁹ While this is an improvement, we recommend this guidance be modified so the VA MSCs explain the option of representation by a VSO during IDES, whether or not the military member expresses an interest. Given the many issues that the member has to handle at this important juncture, changing this interchange to a more positive exchange may be more productive.

While the guidance to VA MSCs is in the right direction, there has been no such change from the DOD directing PEBLOs to raise VSO representation as an option at any point in the process. Therefore, we recommend that PEBLOs be required to inform military members about the option of VSO representation as well. Having PEBLOs provide this option earlier in the IDES process, and on the DOD side of the rating process, would help ensure that military

⁹ VA Integrated Disability Evaluation System Guide, December, 2011, page 16.

members know that VSOs are available to represent them not just with the VA but also with the DOD as their disability claim is processed.

The last area to address is the effectiveness of the PEBLOs. The RWTF found in its work with focus groups that many participants had limited knowledge as to the role of the PEBLO. Although several spoke favorably, more often than not comments about PEBLOs were negative. Military members seemed to expect them to be more of an advocate than they were.¹⁰ Twenty-eight percent of RWs responding to the RWTF mini-survey indicated that the PEBLO was very or extremely helpful, while 32 percent indicated the PEBLO was moderately helpful. These statistics would indicate that, while 60 percent of respondents had a favorable impression of PEBLOs, a significant minority of 40 percent did not have a favorable impression.

The RWTF mini-survey results are in contrast with the more positive survey findings of the DOD Office of Wounded Warrior Care and Transition Policy (WWCTP). They found PEBLO customer service earned 79 percent to 88 percent satisfaction ratings across the services. DOD WWCTP also found that 65 percent of survey respondents indicated that the PEBLO managing their case was helpful or very helpful to them.

While DAV has received information from the field that indicates the performance of PEBLOs has continued to improve generally, there are occasions in which PEBLOs have incorrectly advised members on what their actual disability ratings are. Recently, a PEBLO advised a member that he could not personally appear before the Formal Physical Evaluation Board to appeal the IPEBs decision. This was clearly in error, but one of DAV's NSOs was able to provide the correct information to the member. In order to prevent these types of errors and improve satisfaction, we believe it is imperative that the training and quality control be reviewed and more closely monitored.

Mr. Chairman, this concludes my testimony. I would be glad to answer any questions you may have.

¹⁰ DOD Recovering Warrior Task Force Report, September 2, 2011, page 21.