

DEPARTMENT OF VETERANS AFFAIRS
ADVISORY COMMITTEE ON DISABILITY COMPENSATION

March 21-22, 2016

MINUTES

Members Present:

Joseph Kirk Martin, Jr., Chairman
Hal K. Bird (via telephone)
Doris Browne
George Fay
Elder Granger
Timothy J. Lowenberg (via telephone)
Jonathan Roberts
Elizabeth Savoca
Michael Simberkoff

Members Not Present:

Warren Jones
John Maki
Tom Pamperin

Staff Present:

Ioulia Vvedenskaya, DFO
Scott Blackburn, Director, MyVA Task Force, VA**
Anna Crenshaw, Benefits Assistance Service, VA*
Bradley Flohr, Special Advisor to Compensation Service Director, VBA**
Erin Gittens, Special Emphasis Programs & Outreach, Benefits Assistance Service, VA*
Ashley Hanahan, VHA
Gill Marchetti, Acting Chief for the Regulations Staff, Compensation Service, VBA**
Zanetta Miell, Benefits Assistance Service, VA*
Jeffrey Moragne, Director, Advisory Committee Management Office, VA*
Jocelyn Moses, Chief, Procedures Data Sharing Staff, Compensation Services, VBA*
Thomas Murphy, Deputy Under Secretary for Benefits, VBA**
Carla Riddick, Program Analyst, Compensation Service, VBA

Also Present:

DeShanna Brown, LSU*
Scott Hope, DAV**

Nathan Johnson**
Matthew Labozzetta, American Legion
Jim Marszalek, DAV**
Kristy Park, Jefferson Consulting*
Diane Boyd Rauber, NOVA
Paul Varela, DAV*

*March 21 only

**March 22 only

The Advisory Committee on Disability Compensation (ACDC) met in public session on March 21-22, 2016, in Room 645A, U.S. Department of Veterans Affairs, 1800 G Street, N.W., Washington, D.C. 20006.

Monday, March 21, 2016

Opening Remarks

Chairman Martin called the Committee to order at 8:35 a.m. There were two new members, Mr. Fay and Dr. Granger. Committee members, VA staff, and public observers introduced themselves. The Chairman outlined the agenda for the meeting.

The Committee recessed from 9:14 a.m. to 9:29 a.m. to await the arrival of the first scheduled presenter.

Federal Advisory Committee Overview: Membership, Roles, and Responsibilities

Mr. Moragne explained that ACDC, like all VA advisory committees, is governed by the Federal Advisory Committee Act of 1972. Some committees, like ACDC, are established by statute; others serve at the Secretary's discretion. A Designated Federal Officer (DFO) or an alternate must be present for the committee to meet. The DFO is required to provide notice at least 15 days prior to a meeting. The VA asks that the DFO provide at least 30 days' notice. Committees can meet privately, but only for preparatory work. Each committee is balanced in terms of skill set, experience, and demographics. VA policy dictates that no one shall serve on a committee for more than two terms, four years in ACDC's case. Committee members may testify before government entities as private citizens, but not as members of the Committee. VA seeks to foster cooperation among advisory committees with overlapping interest areas. Some committees have gotten together and formed joint subcommittees.

Opportunity for Public Comment

Chairman Martin offered the opportunity for public comment. DeShanna Brown, Director of Development for Student Life and Enrollment Services at Louisiana State University (LSU), said the university was in the process of building out its veteran and military student services program and is seeking philanthropic support. Ms. Brown said she welcomed advice from Committee members. Dr. Granger pointed to the success of the Beck PRIDE Center at Arkansas State University and Walmart's veteran hiring program. Dr. Savoca

asked if LSU had had any success with alumni donations. Ms. Brown said it had gotten some support but still had a ways to go. Dr. Granger also suggested Congressionally Directed Medical Research grants through the Department of Defense (DoD).

Chairman Martin informed the Committee of a conversation he had with a senior economist from the RAND Corporation, which has formed a panel to conduct longitudinal studies on veterans' issues. The Chairman told the economist he would pass this information along, and that RAND could compete for the bid should the Committee request a study. Mr. Bird suggested that a representative from RAND address the Committee at a future meeting.

The Committee recessed from 10:31 a.m. to 10:58 a.m. to await the arrival of the next scheduled presenter.

Status of the Guard/Reserve Issues Concerning Separate Health Assessment

Ms. Moses provided the update. One gap that remains is the communication or notification that an individual is separating. DoD does not have enough time under the current rules to notify a Guard member or Reservist of separation in order to schedule an exam. The Compensation Service is looking at ways of revising the Separate Health Assessment program, but it is dealing with some IT issues. DoD is developing SPORTS, an application scheduled to be piloted in June, which will notify the agency when servicemembers are separating.

Chairman Martin pointed out that DoD had made the commitment to let everyone receive an exam, with a deadline of January 15 for active duty, and January 16 for Guard and Reserve. Ms. Moses replied that DoD has promised to make its Separation Health and Physical Examination (SHPE) available to Guard and Reserve members. The issue is whether individuals are actually receiving that exam prior to separating.

Mr. Fay asked if the timeline referred to separation from an active duty assignment or the Reserves. Ms. Moses said it meant separation from the Reserves. Dr. Simberkoff observed that Reservists might have an incentive to minimize disabilities if they want to stay in the Reserves.

Chairman Martin asked if retiring Reservists were included in the Separation Health Assessment. Ms. Moses answered that they were supposed to be. Dr. Simberkoff noted that for retiring Reservists, most of their health issues are not related to their military career. Ms. Moses replied that each person receives the same comprehensive examination.

Mr. Fay noted that it could be inconvenient for Reservists to physically travel to a place where they could receive their examination. Chairman Martin recalled that he had a hard time getting his separation exam. Mr. Bird said the chairman's experience was pretty common, and suggested that a separation exam be a requirement for Reservists. Mr. Fay added that it should be specified who would pay for the exam.

Mr. Bird commented that the exam should establish whether the injury occurred when the Reservist was on active duty. Dr. Simberkoff and Mr. Fay pointed out that was a difficult task, but Mr. Bird insisted it was possible.

Mr. Fay asked whose job it was to perform the final exam, and to collect the records prior to the exam. Mr. Bird replied that the Reservist was responsible for those things. Mr. Fay observed that in most cases commanders would need to walk enlisted men through the process.

Dr. Simberkoff asked what percentage of Guard members and Reservists were receiving their annual assessment. Dr. Granger said that figure came out quarterly at the highest level of DoD readiness. Mr. Fay observed that there are thousands of programs commanders are required to comply with, and if a program is not a top priority, it will likely not get done.

Dr. Granger proposed having DoD brief the Committee on its annual assessment program.

Mr. Lowenberg commented on the benefits of the Transition Assistance Program (TAP). Chairman Martin said the Committee had been tracking how Guard members and Reservists not on active duty get TAP. Ms. Moses said that a representative from the VA Office of Transition, Employment, and Economic Impact (TEEI), which provides oversight to the TAP, would brief the Committee later in the meeting. Mr. Bird said that when he retired, a VA representative had told him TAP only applied to active duty members.

Chairman Martin pointed out that Ms. Moses' presentation referred to the DoD SHPE as mandatory. Ms. Moses replied that the exam was mandatory as of January 1, 2014. Some branches of the service have been quicker to comply than others. Mr. Fay suggested that the exam be a prerequisite for getting a DD214 form.

Dr. Vvedenskaya asked what the VA could do to improve compliance. Mr. Fay proposed starting with a verbal check-in, and following that up with a written recommendation if necessary. Dr. Vvedenskaya suggested Ms. Moses check the status of compliance for the Committee.

Dr. Vvedenskaya reminded Committee members that they could not make a direct recommendation to DoD, but they could recommend to VA that the agency enhance a particular collaboration with DoD. Mr. Bird commented that VA could explore the possibility of providing a separation exam in lieu of a service-provided exam when veterans do not have access to one. Dr. Simberkoff observed that such a recommendation would be easier to implement if an exam format were in place.

Chairman Martin said one of the benefits of a TAP briefing is that would it ask the separating Guard member or Reservist if s/he intends to file a claim. If the answer is yes, the briefer can help the individual start the process.

At a previous Committee meeting, Ms. Moses had said the goal was to resolve 75 percent of late inflow documents within 45 days. Chairman Martin asked if this figure was still accurate. Ms. Moses said it was still the standard in the Department of Defense Instruction, but that the agency had typically been doing much better than the 45 day timeframe. VA is working with DoD on an electronic certification, which should be rolled out in midsummer.

Dr. Roberts asked if there would be one computerized health information system, or if each of the services would have its own. Ms. Moses assured him it would all be one system, the Healthcare Artifact and Image Management Solution (HAIMS).

The Committee recessed from 11:47 a.m. to 1:00 p.m. for lunch.

Afternoon Session

Fully Developed Claims (FDC) Update

Ms. Riddick provided the update. FDC is an optional program offered to veterans and survivors. Its purpose is to expedite decisions from VA on claims for compensation, pension, and survivors' benefits submitted with non-Federal evidence. The program was piloted in one Regional Office in 2009, and implemented in all Regional Offices the following year. When the program was launched, the goal was to resolve claims within 90 days. VA retrieves relevant records from Federal facilities, and will provide a medical examination and/or opinion if necessary.

Reasons for excluding a claimant from the FDC program include: having a claim or appeal pending at the time an application is received; an unsatisfactory character of discharge determination; and insufficient medical evidence. For an FDC claim to be successful, the applicant must present all evidence simultaneously. Mr. Fay asked who determines whether a claim is simple enough for FDC consideration. Ms. Riddick said an intake processing team makes that initial determination. A workgroup established the guidelines for what constitutes a simple claim.

Dr. Roberts asked if the Compensation Service was doing anything to deal with more complicated claims. Ms. Riddick said each year the agency has tried to be more specific on what information is required on the 526EZ application form. Dr. Roberts said that a lot of veterans were frustrated over the length of time it can take to resolve a complaint, and asked what was being done about that. Ms. Riddick said VA had a wide variety of programs and was trying hard to promote them. She suggested the frustrated veterans he cited enlist a Veterans Service Organization (VSO) for help.

Dr. Simberkoff wondered how many outstanding claims were over a year old, noting that there had been efforts to eliminate such claims. Mr. Fay wanted to know what percentage of claims received were complex. Dr. Vvedenskaya reminded the Committee that many simple claims were delayed because the applicant submitted supplemental information, and promised to have the data requested by the time of the next Committee meeting in June.

Mr. Fay asked why VA didn't ask for medical records. Dr. Simberkoff said it does, but it can't subpoena the information, and when it asks private sector physicians to fill out a form, it does not pay them. Mr. Fay suggested that the doctors be compensated for filling out those forms.

Mr. Fay asked if having everyone on the same electronic records system would solve the problem. Dr. Simberkoff pointed out that DoD records were not universally available to VHA, so one would need to go through the Joint Legacy Viewer (JLV) to view a limited number of military records. Chairman Martin commented that for Guard members and Reservists, a lot of the relevant records are with civilian doctors, and even a fully computerized Guard and Reserve is not going to be able to retrieve civilian records. Dr. Browne added that even if electronic records do exist, they may not all be part of the same system.

Dr. Simberkoff said that even though VHA had access to military records, he did not believe VBA did. Ms. Riddick replied that it did have access through programs like HAIMS and JLV.

Ms. Riddick said that so far this year FDCs make up 51 percent of total claims, compared to just 3.4 percent in 2013. She attributed this to the support of VSOs.

The Compensation Service and VHA are spearheading Ready for Decision (RFD), one of the Secretary's 12 breakthrough initiatives. An RFD Claim must be an FDC and include medical evidence sufficient for rating purposes, which would include a Disability Benefits Questionnaire (DBQ) referral program, a complete private use DBQ, and treatment records. Ms. Hanahan added that VHA had established a self-referral DBQ clinic process. The RFD program is expected to be piloted April 4 at the Baltimore Regional Office, with a national rollout date of December 16. The goal is to have RFD claims resolved in 30 days rather than 90.

Chairman Martin asked if the Compensation Service was seeing the same rating decisions in FDCs as in standard claims for the same medical condition, pointing out that both types of claims had the same criteria. Ms. Riddick said she would have to obtain the data, but that she thought the figures were basically the same.

Chairman Martin questioned what happened when a claim was determined not to be fully developed. Ms. Riddick said those claims would go through the traditional claims process, in which case the VA would notify the claimant.

Dr. Roberts asked if most claims denied the FDC process are denied because of something the veteran neglected to do, and if so, how does VA get the veteran to fill out the application correctly. Ms. Riddick said the most common reason for denying claims FDC status was lack of evidence from a non-Federal facility. VA has asked VSOs to get involved in educating veterans on the intricacies of the application process.

Dr. Roberts proposed that the VA, through the Secretary, ask Congress to authorize payment of private physicians to fill out the forms necessary to complete the adjudication.

VHA Homeless Veterans Initiative

Ms. Crenshaw and Ms. Gittens provided the update. Each VA Regional Office has a designated Homeless Veteran Coordinator, who is a Homeless Veteran Outreach Coordinator (HVOOC), a Homeless Veteran Claims Coordinator (HVCC), or both. At least one full time Homeless Veteran Coordinator will be at the Regional Offices that the Secretary determines have the largest homeless veteran populations.

The program includes homeless veteran reintegration programs, including reintegration programs for homeless women veterans and homeless veterans with children, a plan to reduce or eliminate veteran homelessness at every Regional Office, coordination of outreach activities, and outreach and plan oversight. National outreach includes national conferences, Stand Downs, and point-in-time (PIT) counts.

In FY2015, HVOCs and HVCCs made 1,893 contacts with homeless shelters. There were 1,219 referrals to VHA and the Department of Labor's (DOL) Jobs for the Homeless Program, and 1,654 to other community support or social service agencies. Regional Office (RO) staff conducted 8,506 hours of outreach targeted to homeless veterans.

Direct assistance at the national level comes in the form of National Call Centers, the eBenefits program, the Inquiry Routing & Information System, Congressional inquiries, and Twitter and Facebook town halls.

RO personnel assisted 22,754 homeless veterans. 4,252 claims were taken at homeless veteran outreach events, and 143 veterans attending these events were registered for eBenefits.

The Benefits Assistance Service (BAS) holds national monthly training calls with each of the ROs and conferences and trainings with groups like the National Coalition for Homeless Veterans and the National Coalition on Ending Homelessness. It maintains a website for homeless veteran coordinators, as well as a list of coordinators.

Each RO has a plan to expedite homeless veteran claims. During FY2015, VBA processed 15,083 compensation claims and 2,627 pension claims. The average claim was pending for 71.5 days, beating the national goal of 75 days.

VBA collaborates with partners like VHA and DOL to help homeless veterans. It is involved with the burial of unclaimed and indigent veterans. During FY2015, VA sold 93 properties under the Homeless Shelter Program. It helped 90,262 veterans and servicemembers who were in default retain their home or avoid foreclosure, a 13 percent increase from 2014.

Health care services provided by the VA include Community Resource and Referral Centers, Domiciliary Care for Homeless Veterans, Health Care for Homeless Veterans, Health Care for Re-entry Veterans Services, Homeless Patient Aligned Care Teams, and the Homeless Veteran Dental Program.

Veterans in crisis can call or text the Veteran Crisis Line, or go to veteranscrisisline.net. The website maketheconnection.net allows veterans with mental health issues to connect with one another.

There are several housing assistance programs, including Housing and Urban Development-Veterans Affairs Supportive Housing, the Acquired Property for Homeless Veterans Program, Project CHALENG (Community Homelessness Assessment, Local Educations, and Networking Groups) for Veterans, the Homeless Providers Grant and Per Diem Program, and the Home Loan Guarantee.

Employment assistance programs include Compensated Work Therapy, Vocational Rehabilitation and Education, the GI Bill, and Employment Information for Employers.

There were 47,725 homeless veterans identified on a single night in January 2015. California had the largest number of veterans experiencing homelessness, followed by Florida, New York, and Texas.

In 2010 there were 11 states with greater than 15 percent veteran homelessness. By 2015 there were only six states where veteran homelessness was greater than three percent.

Challenges the VA Homeless Veterans Initiative faces include budgeting for outreach, coordination with multiple competing business lines, completing claims in a timely manner, and failure to notify VBA of homeless status.

Ms. Crenshaw felt the time was right to look at resource allocation and determine whether some resources need to be moved. Mr. Fay asked how much flexibility Ms. Crenshaw's team had to shift personnel. Ms. Crenshaw said she was dealing with bargaining unit employees, so any reallocation would need to be negotiated, but a personnel shift is more than likely. Mr. Fay asked if there was anything the Committee could do to get VA to act more quickly on the issue. Dr. Vvedenskaya said the Committee could make a recommendation to the Secretary urging more flexibility in terms of resource allocation.

Dr. Roberts noted that the number of homeless veterans counted in January 2015 was a snapshot, and asked if there was a way of measuring that figure over a period of time. Ms. Crenshaw said VA received that number from the Department of Housing and Urban Development, and that there were no real-time numbers available. Ms. Gittens encouraged him to think of PIT counts as a census.

Dr. Browne asked if the Transitional Housing Program was still required to provide associated programs like substance abuse. Ms. Crenshaw said she did not know since the program was administered by VHA.

Dr. Roberts asked whether homelessness was considered a service-connected disability. Ms. Crenshaw said it was not, although many homeless veterans did have service-connected disabilities.

Dr. Simberkoff reminded the Committee that at its last meeting it had discussed trying to accelerate benefits for people being discharged. Ms. Crenshaw said it was important for commanders to have conversations with transitioning servicemembers so that they have an action plan in place for when they leave service. The Soldier for Life program has been very helpful in this regard.

Chairman Martin asked when the 2016 PIT count numbers would become available. Ms. Crenshaw said usually these numbers come out in August.

The Committee recessed from 3:13 p.m. to 3:22 p.m.

Addendum—Status of the Guard/Reserve Issues Concerning Separation Health Assessment

Ms. Moses told the Committee she had met with TEEI officials, who confirmed that information in the TAP briefings did apply to Guard members and Reservists. Furthermore, TEEI is providing briefings specific to Reserve populations, and has provided eight so far.

Opportunity for Public Comment

There were no oral public comments. The Committee did receive an email comment from Camella George, which Chairman Martin read into the record. Ms. George, the wife of a USMC veteran, expressed her dissatisfaction with what she saw as the “cookie cutter, one-size-fits-all approach” to evaluating medical conditions by VBA raters using the Live Manual online. Dr. Vvedenskaya reminded the Committee that it was tasked under its charter to advise the Secretary on the programmatic level. It did not address individual veterans rating programs or requests. However, Ms. George’s comments would be made part of the record.

Dr. Simberkoff and Mr. Fay suggested writing Ms. George a letter that she seemed to be unaware that every DBQ has a field on which the examining healthcare professional can add notes missing from the body of the DBQ. Dr. Granger added that the physician might not be aware s/he can include those comments. Dr. Vvedenskaya said she would send an email to the veteran, which she would forward to the Committee.

Chairman Martin suggested the Committee could look at whether there were issues with the online Live Manual. He reminded members that the Committee had recently received two briefings and been assured that the content integration was complete, so he did not feel it was likely there was anything wrong.

Committee Deliberation

Chairman Martin asked Dr. Vvedenskaya to comment on the Veterans Affairs Schedule for Rating Disabilities (VASRD). Dr. Vvedenskaya said VA decided in 2008, because of changes in terminology and clinical guidelines, to give the whole schedule an unprecedented comprehensive review and update. In August 2010 four physicians were hired to begin the review. Workgroups were formed for each of the 15 body systems. Six body systems have been published in the Federal Register as a proposed rule; the rest are still going through the VA concurrence process.

Dr. Vvedenskaya and her colleagues draft the regulation based on the recommendation of the workgroups. It goes to the VA Compensation Service, then to the Office of the Under Secretary for Benefits, followed by the Office of General Counsel (OGC). The Social Security Administration, National Institutes of Health, and the Department of

Health and Human Services provide complementary concurrence. The Office of Management and Budget (OMB) reviews how much the regulation will cost, and then it goes to the Secretary. If the Secretary approves it, it can be published in the Federal Register as a proposed rule.

Once a rule is published, the public has 60 days to submit comments, after which it typically takes Dr. Vvedenskaya and her team about three months to draft a final regulation, which goes through the same process as the proposed rule.

Mr. Fay asked how closely involved Secretary McDonald was in this process. Dr. Vvedenskaya said she felt he was deeply concerned with reengineering the culture at VA. She added that the Committee would have a clearer picture the following day, when it received a briefing on MyVA. She had not personally met Secretary McDonald, but his predecessor, Secretary Shinseki, made VASRD a priority second only to ending veteran homelessness.

Several Committee members expressed concern over the amount of time it takes a final rule to get approved, typically four to five years. Dr. Granger asked what the Committee could do to help.

The Committee's next Biennial Report is due at the end of September. Dr. Browne asked if the Committee had received comments from its last Report. Chairman Martin said it had not, although the Report was on the agenda for the following day. Dr. Vvedenskaya said the Report had gotten to the Chief of Staff's office.

Dr. Roberts said he would like to get some follow-up on the issue of homeless veterans at one of the next two Committee meetings. Dr. Vvedenskaya suggested the Committee ask for an update at its September meeting.

Dr. Roberts asked if the Secretary could address the Committee at a future meeting. Dr. Vvedenskaya said she had tried, but he was unavailable. However Tom Murphy, VA's Deputy Under Secretary for Benefits, would visit with the Committee the following day. Mr. Fay proposed that one of the reasons Dr. Vvedenskaya had been unsuccessful in getting the Secretary to come was that VA had 26 advisory committees.

Dr. Vvedenskaya said her plan was to have the Committee meet three more times in 2016, in June, September, and December. She suggested that members set aside three hours of the June meeting to work on the Biennial Report. Chairman Martin said for the last Report Committee members had come up with general ideas that needed addressing, and then assigned themselves to different topics to generate a draft. The members then discussed and tweaked the draft at a meeting. Dr. Vvedenskaya said she hoped to receive comments from the 2014 Report by June.

Chairman Martin reminded the Committee that although it had not received visits from the Secretary during his time there, it had been addressed several times by past Chiefs of Staff.

There being no further business, at 4:32 p.m., Chairman Martin declared the Committee in recess until 8:30 a.m. the next day.

Tuesday, March 22, 2016

Opening Remarks

Chairman Martin reconvened the meeting at 8:30 a.m. Public observers introduced themselves to the Committee.

The Chairman asked members to think about topics for the Committee's Biennial Report. He predicted the Committee would revisit the issue of veteran homelessness. He also encouraged members to look at the claims backlog, VASRD, the Fully Developed Claims program, and women veterans' issues.

The Committee had been scheduled to receive an update on the National Work Queue from Astrid Perez, the program's Deputy Director, but she was ill so the briefing would be postponed. Mr. Bird proposed the Committee use that portion of the schedule to further examine the issue of transition assistance for Guard members and Reservists. Chairman Martin agreed that would be a great topic to address, adding that the Committee could also take a moment to review its 2014 Biennial Report.

Dr. Granger asked if the Committee had received a presentation from the National Center for Veterans Analysis and Statistics. Dr. Savoca agreed that such a presentation would be useful. Chairman Martin said he would ask Dr. Vvedenskaya to arrange a briefing.

Appeals Reform Initiative

Mr. Marchetti provided the update. He acknowledged that VA's current appeals process is confusing, inefficient, and frustrating. It has multiple steps split over various jurisdictions, and allows an appellant to submit new evidence or make new arguments at any time. An appeal may go through many cycles of readjudication, and there are multiple choke points.

A veteran has one year from the date of decision to file VA Form 21-0958, a Notice of Disagreement (NOD). When VA receives the NOD, it may either grant the appeal or issue a Statement of the Case (SOC). From the date of the SOC, the veteran has 60 days to file Form 9, a Substantive Appeal to the Board of Veterans Appeals. The Board may grant, deny, or remand the appeal back to VBA. If the veteran disagrees with the Board's decision, s/he may continue the appeal to the US Court of Appeals for Veterans Claims (CAVC), the Federal Circuit Court, and the Supreme Court. A veteran is entitled to a hearing at any stage of the process.

Dr. Roberts asked at what point in the process veterans typically become represented by counsel. Mr. Marchetti said the fees are covered by the VA once the case goes to the Board. Dr. Simberkoff clarified that they can be represented at any time. Dr. Granger asked who typically represented the veterans. Mr. Marchetti said VSOs accounted for the bulk of veterans' representatives but the percentage of private sector attorneys had been growing since they were first allowed to represent veterans in 2008.

Between 2012 and 2015, pending appeals increased 35 percent to over 440,000. VA projects that pending appeals will increase to more than 2.2 million by the end of 2027 without reform.

Dr. Granger asked if VA has specified to Congress what sort of legislative changes it would like to see. Mr. Marchetti said VA submitted legislative proposals to Congress every year. Dr. Granger further asked if the Committee could include something in its Biennial Report that could help in this area. Mr. Marchetti said that the House and Senate each had bills pending that were designed to expedite the appeals process, H.R. 677 and S. 2473, and that it would be helpful if the Committee made a recommendation in its Report. Dr. Vvedenskaya mentioned that an appeals reform workgroup had been formed in the past year.

Dr. Roberts asked for more information on the Board of Veterans Appeals. Mr. Marchetti said the Board was a staff office of the Secretary, composed primarily of attorneys and administrative law judges, and handles all VA appeals, not just disability claims. Dr. Roberts asked if there were any physicians on the Board. Dr. Vvedenskaya said there was one, and offered to make copies of a PowerPoint presentation a Board representative had made at a past Committee meeting.

The Committee recessed from 9:29 a.m. to 9:41 a.m. to allow Dr. Vvedenskaya to make copies.

Chairman Martin invited Mr. Lowenberg, the only attorney on the Committee, to share his thoughts on the appeals reform presentation. Mr. Lowenberg said he felt the Committee should receive a briefing from the workgroup Dr. Vvedenskaya mentioned to get an idea of what legislative changes were necessary. Mr. Bird proposed that the Committee hear from a Decision Review Officer from one of the Regional Offices to get that perspective.

Chairman Martin recalled that the Veteran Population Project (VetPop) had briefed the Committee before and provided useful data. He proposed that the Committee invite VetPop to provide another briefing.

Dr. Vvedenskaya told the Committee that potential meeting space in June was filling up fast and asked Committee members to let her know of their availability that month as soon as possible so she could schedule the meeting. Possible dates were June 13-14, June 20-21, and June 27-28.

ACDC 2014 Biennial Report Update

The first issue covered in the 2014 Biennial Report was total disability based on individual unemployability. The Secretary's January 6, 2014 response to the ACDC 2012 Report tasked the Committee to conduct a study of the issue of individual unemployability (IU) and make recommendations based on the study. In its 2014 Report, the Committee said it was reviewing available literature and past IU studies, as well as an ongoing GAO study. It would include its recommendations in either a 2015 Interim Report or the 2016 Biennial Report. The Committee eventually decided not to make a recommendation because it was not equipped to conduct a study.

The next issue concerned the utilization of Decision Review Officers (DROs) at VA Regional Offices (ROs). The Committee had recommended in its 2014 Report that DROs be utilized for appeals processing in order to reduce the average elapsed processing time for appeals under the jurisdiction of the various VA ROs. Mr. Fay said it would be helpful to visit an RO so he could see a day in the life of a DRO. Dr. Simberkoff proposed that someone from an RO brief the Committee. Dr. Vvedenskaya suggested the Committee request a briefing from someone in the Office of Field Operations in charge of overseeing the ROs.

For its third recommendation, the Committee suggested the Secretary and Congress add manpower to the appeals process at the Regional Office level. Mr. Bird said he would like to hear from someone in a Regional Office even if the Committee was briefed by the Office of Field Operations. Dr. Granger agreed. Dr. Vvedenskaya said she would explore the possibility of an RO site visit.

The next item in the 2014 Report had to do with DBQs and their applicability from the civilian sector. The Committee had recommended that VA analyze the acceptability of DBQs among VA and civilian physicians by disability, and adapt future iterations for requirements of all examining physicians and claims adjudicators. As discussed the previous day, the Committee was concerned that civilian physicians were not completing the forms, possibly because they were unfamiliar with them or didn't have the time. Dr. Simberkoff said the biggest reason was they were not getting paid to fill them out, and opined that DBQs had become a lot more user-friendly.

In a similar recommendation, the Committee had urged ensuring that future iterations of DBQs meet VBA and court guidelines for sufficiency. Mr. Lowenberg said he felt more information was needed. Mr. Lowenberg asked if the Committee would consider a recommendation that the Secretary respond to a Committee recommendation within 12 months.

The next issue in the 2014 Report concerned medical doctors in Regional Offices and claims adjudicators in medical centers. Dr. Simberkoff observed that the medical doctor issue had been resolved, but the claims adjudicator side still needed to be addressed.

Another issue dealt with separation health exams. Based on the presentations it received prior to the submission of its 2014 Report, the Committee's recommendation was continue to press DoD and the services to implement separation health exams for servicemembers. According to the previous day's briefing, DoD had done so, but the question of compliance remained.

The next issue was the use of zero percent evaluation criteria in the VASRD. Dr. Vvedenskaya reminded the Committee that the rating schedule encompassed 15 body systems and 800-900 diagnostic codes, each of which may contain one or more medical condition, and one to five levels of disability. Each level of disability ranges from zero to 100. All diagnostic codes were updated at one time or another between the 1920s and 2015. Some codes have a definition for zero percent disability level, while others do not. A new regulation says that every medical condition of every diagnostic code shall have such a definition, which gives VA the ability to service-connect a condition not disabling at this particular point, making it easier to elevate the level of disability.

The 2014 Report also addressed the issue of determining presumption of service connection. The Committee had attempted to improve the decision-making process based on data reviewed. The evidence should be deemed sufficient, insufficient, or equal evidence for and against.

The next issue concerned the fully developed appeals pilot program. The Committee had strongly recommended that VA support and Congress enact a pilot program for fully developed appeals that follows the proposal developed by the VSOs and the VBA. Chairman Martin said this may explain why Congress currently had two bills pending on this issue.

The Report also addressed Reserve component personnel medical records and access of claims. This issue had largely been resolved with the computerization of certified treatment records by DoD.

Discussion of Guard and Reserve TAP Briefings and Separation Exams

Mr. Bird said he wasn't sure what sort of actionable item the Committee should pursue on this issue. The separation exam was now theoretically in place, but the Committee did not know the rate of compliance, or the effect this was having on claims coming out of the Guard and Reserve. He noted Ms. Gittens had mentioned a transition assistance outreach to the Guard and Reserve during her presentation, and said it was necessary to determine the VA's supporting role.

Chairman Martin expressed concern over Ms. Moses' reporting that the TAP briefing had been presented to Guard members and Reservists eight times, pointing out that there were hundreds if not thousands of Guard units across the country. Mr. Bird said he would be interested in capturing relevant data from the new exam requirement to see if it was generating claims, and whether those claims were assessed well by the VA system. Dr. Granger suggested that the Committee would have a better idea what to do as the number of briefings grew. Chairman Martin cautioned that it would take a long time to reach each Guard unit since they are so dispersed.

Mr. Bird said his recommendation would be to consider including in the separation briefs instruction on signing up for eBenefits and filing a claim, as well as how to enlist the help of a VSO, and further proposed recommending the inclusion of VSOs in the separation briefing process.

Dr. Vvedenskaya reported that she had just learned the Committee's 2014 Biennial Report was in the Secretary's office, but it had not been signed yet. She promised to distribute the VA's response to the Committee's recommendations as soon as she received them.

Chairman Martin said he would like to have Robert Snyder, VA's new Chief of Staff, address the Committee. Dr. Vvedenskaya said she would try to book him for the June meeting.

The Committee recessed from 10:56 a.m. to 10:59 a.m. to await the arrival of the next scheduled presenter.

MyVA Update

Mr. Blackburn provided the update. He noted that Secretary Shinseki had put together a list of values for the VA. When Secretary McDonald took over, he made it a priority to see to it that VA employees lived those values. The objective was to move VA from a rules-based culture to one based on principles. Mr. Blackburn told the story of three VA employees in Vermont whose proactivity saved a veteran's life and said he wanted to hear similar stories.

Secretary McDonald has championed the concept of "flipping the pyramid," putting veterans and their families first instead of VA leadership. The VA seeks to give each veteran the right level of service in a way that is more compassionate. In order to improve the veteran's experience, it is necessary to improve the employee's experience as well. This requires a culture of improvement, where employees feel empowered to deliver principles-based care.

With a change in administration looming, VA has decided to focus on a few critical priorities. It has a clear goal of what it hopes to accomplish in 2016, which it plans to use as a launching point for the overall transformation. Mr. Blackburn said he intended to run this as a private equity firm rather than a government agency to make sure the VA got to where it wanted to go this year. The idea is to build so much momentum that the next administration will not want to disrupt it.

There are eight initiatives intended to benefit the veterans directly, and four initiatives designed to support the process. The Deputy Secretary has adopted six of these initiatives and the Secretary has adopted six. Both are meeting with each of the small working teams for an hour every other week. Initiatives include improving the veteran experience; improving access to health care; creating one easy-to-navigate digital platform; improving and modernizing contact centers; creating transparency; simplifying the appeals process; and reducing veteran homelessness.

Improving the employee experience includes developing leadership skills in leaders. A key component of that is sharing one's background with one's team. Also important is eliminating wasteful practices. VA has brought in Noel Tichy, a professor from the University of Michigan who has helped GE with its transformation initiatives, to identify the reports, approvals, meetings, measures, and processes (RAMMPs) that do not help the agency fulfill its mission.

VA has been working with Congress, the White House, and VSOs to devise a solution for reducing the appeals backlog and expediting the process. Senators Blumenthal and Sullivan have agreed to work on a bipartisan bill. The goal is to have every appeal resolved within one year. The Board of Veterans Appeals (BVA) will be staffing up, and VBA is shifting some resources to help deal with appeals.

VA has begun measuring the compensation and pension experience. The previous day it demonstrated a tool for the senior leadership team. The tool has an overall customer satisfaction metric, which can be broken down into different subcategories. The objective is to create transparency around what needs improvement.

Dr. Granger asked Mr. Blackburn's team to look at the approval process for staffing documents, claiming that it was currently too slow. Mr. Blackburn agreed that it was a systematic problem, and added that Secretary McDonald was interested in expediting the process, but cautioned that insufficient resources limit what the VA can do.

The Committee recessed from 12:03 p.m. to 1:05 p.m. for lunch.

Afternoon Session

Presumptive Diagnoses/Conditions

Mr. Flohr provided the update. There are four ways the VA determines service connection: direct basis, where a condition is directly due to an injury in service; aggravation, where pre-existing condition is aggravated during service; secondary service connection, where the veteran is diagnosed with a condition while on active duty; and presumption, where it's presumed the condition stems from when the veteran was on active duty.

Servicemembers are considered on duty at all times, so anything that happens to them is incurred in service, regardless of whether they are actually performing duties. Service connection is also independent of any military disability rating. Disability compensation is tax-free.

By statute, VA presumes a veteran sound both physically and mentally upon entrance of active duty except for those conditions specifically noted in the enlistment examination. There is also a statutory benefit of the doubt; when there is equal evidence for and against a service connection claim, the claim is granted.

Chairman Martin pointed out that Guard members and Reservists are not on active duty all the time, so it becomes hazy determining their status when an injury occurs. Mr. Flohr said a Guard member or Reservist does not become a veteran for VA purposes unless s/he incurs a disability resulting from injury or disease during a period of active duty. Dr. Granger asked if Mr. Flohr had a presentation dealing specifically with the Guard and Reserve. Mr. Flohr said he did not, but he was sure someone in VA did. Dr. Granger stressed the importance of having such a presentation.

Functional impairment is generally the form of impairment VA uses to determine a service connection, but in some cases it uses other types of impairment. For mental disorders, it currently uses symptom-based impairment. Sometimes VA will encounter a condition not covered by one of the 800 VASRD diagnostic codes, in which case it will note the one it is most analogous to.

Disability claims processing requires three things before determining a service connection: evidence of a current disability, evidence of an event in service, and a medical nexus, or link, between the current disability and what happened in service. Presumption typically eliminates one of those three, generally providing a nexus.

Types of presumptions include chronic diseases if they become diagnosed to a degree of 10 percent or more within one year following separation from service; tropical diseases; Agent Orange; certain diseases in former prisoners of war; cancer arising from atomic

radiation; and undiagnosed and chronic multi-symptom illnesses from the Gulf War. Service in Vietnam that has nothing to do with exposure to Agent Orange is the one presumption that is not rebuttable. Mr. Flohr and his team look at available reports and decide if they can recommend a presumption to the Secretary, who makes the ultimate decision on whether to add a presumption.

DoD identifies bases where any kind of toxins may have been used or stored, and places them in Periodic Occupational Environmental Systems (POEMS), making them available online so that Mr. Flohr and his team can research a claim. The Joint Trauma Analysis and Prevention of Injury in Combat Program catalogued everyone with a blast exposure within a certain distance in the last 10 years. Mr. Flohr is a member of a DoD-VA joint deployment health workgroup that meets monthly and conducts an airborne hazard symposium once or twice a year. VA is working with DoD to create a system of Individual Longitudinal Exposure Records (ILER), which will include everyone who enters service. Should an exposure occur where the servicemember is stationed, it will be entered into his/her ILER.

The water at Camp Lejeune was contaminated with the carcinogens perchloroethylene, trichloroethylene, and vinyl chloride, from at least 1953 until 1987. There are no presumptions in this matter, so VA was required to gather as much information as possible, consider how long an individual was at the base, family history, and other exposures outside the Corps or Navy, and consult professional occupational and environmental health specialists for medical opinions. The grant rate is not good because there are a lot of negatives. In 2012 Congress passed the Honoring America's Veterans and Caring for Camp Lejeune Families Act, which provides treatment for veterans for one of fifteen conditions that occur, and establishes VA as the payer of last resort for family members. The Secretary asked Patrick Breyse, Director of the Agency for Toxic Substances and Disease Registry, to find potential associations of treating various cancers and contaminants present at Camp Lejeune. Sufficient evidence was found to link eight or nine cancers with those contaminants. The Secretary has announced he will create eight presumptions.

Dr. Savoca asked if presumptions had to be approved by Congress. Mr. Flohr said they did not, but they did have to go through OMB, get published in the Federal Register, and be subject to public comment. The process typically takes a year to 18 months.

VA is also looking at presumptions with respect to Gulf War-related conditions. The National Gulf War Resource Center has been a strong advocate for presumptions for brain cancer in Gulf War veterans, mostly due to sarin exposure from oil fires. VA's Office of Public Health performed an epidemiological study on brain cancer, which found a slightly increased incidence of brain cancer within one to two years of exposure, but not in later years. A recommendation has been made to the Secretary, who is expected to make an announcement soon.

Mr. Bird asked if anything came to fruition with respect to the multi-symptom neurological aspects of Gulf War syndrome. Mr. Flohr said the Gulf War Act of 1998 created presumptions for an undiagnosed illness and certain medically unexplained chronic multi-symptom illnesses.

The Committee recessed from 2:03 p.m. to 2:06 p.m. to await the arrival of Deputy Under Secretary Murphy.

Address to the Committee/Presentation of Awards

Deputy Under Secretary Murphy answered questions from members of the Committee. Dr. Granger asked about the progress of the VASRD update. Mr. Murphy said it was moving along at “a really fast glacial pace.” Some aspects are moving faster than expected, while others are taking longer. VA has worked with subject matter experts, VSOs, and other stakeholders to determine best practices. Mr. Murphy added that he could shepherd the process as far as the VA Central Office, but beyond that he had no control.

Chairman Martin asked the Deputy Under Secretary if he would like more authority to manage the timetable. Mr. Murphy said that once a policy is put in writing, it can have a limiting influence. Mr. Fay commented that the Committee would like to put a spotlight on VASRD. Dr. Browne observed that phrases like “in a timely manner” were vague, and suggested that more concrete timeframes might be more useful. Dr. Savoca asked who had the ultimate say with respect to the VASRD update. Mr. Murphy said it was the Secretary, although other agencies in the executive branch, like DoD, could weigh in.

Chairman Martin asked the Deputy Under Secretary if there were any issues he felt the Committee should be considering as it prepared its Biennial Report. Mr. Murphy mentioned IU, expressing concern that some veterans were getting more benefits than they deserved, while others, particularly those with mental health disabilities, were not getting nearly enough. Dr. Savoca noted that continuous work history is required for unemployment compensation, and proposed VA use that as a model. Dr. Granger suggested an independent outside study would at least provide documentation and data. Mr. Murphy pointed out that VA’s Vocational Rehabilitation and Employment (VR&E) Program was designed to train veterans for jobs they can do, but its case load had exploded in recent years.

Mr. Fay asked about the staffing process at VA. Mr. Murphy said Congress allocated VA a certain amount of money for its payroll. The VBA has about 21,000 employees, and loses about 55 per pay period. It typically takes two to three weeks to publish a job announcement, two weeks to evaluate applications, and three weeks to conduct interviews. The overall process for filling a slot takes 120-180 days. Mr. Murphy said he is working to streamline the process, partly by starting when an employee announces s/he is leaving, not when s/he actually leaves.

Mr. Murphy presented Mr. Fay and Dr. Granger with Certificates of Appointment to the Committee, and Chairman Martin with a Certificate of Appointment to the Chairmanship.

Committee Deliberation

Chairman Martin said he felt the Committee’s discussion on IU and VASRD was useful. Dr. Savoca suggested the Committee emphasize the issue of mental illness. Mr. Fay said it was important to look at who was being undercompensated, and who was being overcompensated, and suggested VA have a strategic plan before reforming IU. Dr. Browne said she supported a timeline for VASRD updates.

ACDC 2015 Interim Report Update

Dr. Vvedenskaya told the Committee that the Interim Report had cleared Compensation Services and gone to the Office of the Under Secretary for Benefits for review. The Report concerned a veteran's inability to file a Fully Developed Claim when s/he already has a claim working through the system. The Committee had recommended that VA change the regulation so that the veteran could file an FDC unrelated to any existing claim.

Adjournment

There being no further comments, Chairman Martin adjourned the Committee meeting at 3:06 p.m.

Toby Walter
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Preparer of the Minutes

Ioulia Vvedenskaya, Committee DFO

Joseph Kirk Martin, Jr.
Committee Chairman