



**STATEMENT OF  
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LEGISLATIVE COMMISSION OF THE AMERICAN LEGION  
BEFORE THE  
SUBCOMMITTEE ON OVERSIGHT, FEDERAL RIGHTS AND AGENCY ACTIONS  
COMMITTEE ON THE JUDICIARY  
UNITED STATES SENATE  
ON  
“ACCESS TO JUSTICE FOR THOSE WHO SERVE”**

**MARCH 27, 2014**

Chairman Blumenthal, Ranking Member Hatch and distinguished Members of the Subcommittee, on behalf of National Commander Daniel Dellinger and the 2.4 million members of The American Legion, I thank you and your colleagues for the attention you are devoting to the struggles of American veterans as they seek benefits and compensation for their injuries and illnesses sustained in service to this country.

Yesterday, National Commander Dellinger addressed a joint session of the House and Senate Veterans' Affairs committees and the claims backlog at the Department of Veterans Affairs (VA) was at the forefront of concerns he brought before that body. The Commander decried an adjudication process “rife with errors and inconsistencies” and stressed that efforts to eliminate the backlog must include reform of the work credit system as well as improvement in communication between VA and the Department of Defense.

The American Legion has been deeply dedicated to working to end the backlog. The American Legion has over 2,900 accredited service officers nationwide, working from the county to the state to the national level to assist over three quarters of a million veterans with their disability claims. Annually, The American Legion conducts Regional Office Action Review (ROAR) visits in 12 to 15 regional offices. These weeklong ROAR visits examine a random sampling of recently adjudicated claims provided to The American Legion by VA, as well as interviews with VA staff and American Legion service officers working in the regional offices to determine how national policies are being implemented in the field.

It is important to The American Legion to get outside the beltway and out where the rubber meets the road to examine the problem. Often, even the best conceived policies struggle when inconsistently implemented. What we have found is a wide range of effectiveness in regional offices. The variances and lack of consistency contribute to overall efforts to solve the problem.

To understand the problem, it is important to understand how the backlog is defined. In 2010 at The American Legion annual convention in Milwaukee, WI, the Secretary of Veterans Affairs Eric Shinseki laid out the laudable goal of eliminating the backlog by 2015. Secretary Shinseki promised no claims pending for longer than 125 days, and claims being decided with 98 percent accuracy. Since that time, the definition of backlog has been generally agreed upon as any claim pending longer than 125 days.

The most recent figures from VA indicate that of the current 630,110 claims pending, 351,120 of those claim, or 55.7 percent of those claims, have been pending longer than 125 days.<sup>1</sup> For comparison's sake, in 2010, when the major effort to reduce the backlog began, VA counted 510,827 claims pending, with 197,231 of those claims pending over 125 days, representing only 38.6 percent of the inventory<sup>2</sup>. While the numbers today are certainly higher than they were when the major backlog efforts began, at least in 2014 they have finally started to trend back downwards after several years of steady increases.

The American Legion is concerned however, because some of the factors in the declining numbers may not represent the whole picture. Last year, VA made a major push to work on initial claims that had been pending longer than two years, with a subsequent push to address claims pending longer than one year. These claims had provisional decisions issued, so they are no longer counted as initial claims. However, there were problems with the provisional ratings. Investigation by VA's Office of the Inspector General (VAOIG) found that 91 percent of the provisional rating decisions issued were in error, not in compliance with the Veterans Benefits Administration (VBA) guidance related to the two year old claims initiative<sup>3</sup>. The American Legion service officers in other regional offices found similar rates of inconsistency with these claims.

Those claims will have to be appealed. An appealed claim no longer counts as an initial claim, and is not as visible statistically when looking to evaluate the state of the backlog. Furthermore, while an initial claim may take over a year to resolve, appealed claims can take four to five years or longer, thus further denying justice to veterans and increasing their wait times.

One of the contributing factors to this is the way VA counts work credit. As the current work credit system stands, there is no factor for whether the work is done correctly or not. When the work is incorrect, veterans must appeal their claims, and clog the system up for a longer period of time. While many VA employees would like to be fully attentive to every detail of a claim, they are under tremendous pressure to churn out a certain number of claims every day, and cutting corners becomes natural to meet work quotas. There must be balance.

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<sup>1</sup> VA Monday Morning Workload Reports – March 22, 2014

<sup>2</sup> VA Monday Morning Workload Reports – March 20, 2010

<sup>3</sup> Statement of Sondra F. McCauley - Deputy Assistant Inspector General for audits and evaluations Office of Inspector General, Department of Veterans Affairs before the Subcommittee on Disability Assistance and Memorial Affairs Committee on Veterans' Affairs, United States House of Representatives hearing on "adjudicating VA's most complex disability claims: ensuring quality, accuracy, and consistency on complicated issues" December 4, 2013

The American Legion recommends examining the work credit system, and developing a work credit system that adequately addresses not only the quantity of work performed by employees, but also the quality of work<sup>4</sup>. Even a system as simple as giving the employee credit for each claim completed, but removing credit when such work is found to be in error would be both possible in the new electronic processing environment, and would provide a more reliable picture of how work progresses in the offices. Furthermore, getting the claim done right the first time would be equally incentivized with getting the claim to the next desk in the chain.

Finally, a contributing factor to the backlog of claims is the delays in communication between the VA and the Department of Defense (DOD). Because of the difficulties and delays, in 2009 President Obama committed to the long requested goal of a single, interoperable electronic health record that would follow a veteran from the moment they swore their enlistment oath to the sad day when their family must file for honorable burial in a veterans' cemetery. After several years and over a billion dollars working towards the Integrated Electronic Healthcare Record (IEHR) last year VA and DOD announced they could not come to a reasonable agreement on a single record, and would pursue independent systems on their own, that would be compatible with one another.

Our service members and our veterans deserve better and Congress must stop the bureaucratic bickering between the two departments. Hold VA and DOD to their commitments, and make clear to them that if they do not honor these commitments, the funds to continue their path of folly will not be continued.

The project is simple. From the day a servicemember takes their oath of office and passes their initial physical examination to enter military service the VA must be aware of that service member's healthcare record because, at some point in time -- whether it be the near future or thirty years later -- DOD and VA both know that new incoming servicemember will be leaving military service and entering the VA system and will have earned a certain amount of earned benefits, including, perhaps, certain healthcare benefits. A single system, or instant transmission of the information could cut substantial time off of the processing of most veterans' claims. The system must include National Guard and Reserve records, which often present addition challenges and delays.

Again, The American Legion is grateful to this committee for its attention to this and other issues where veterans struggle for justice. It is vitally important that Congress maintains their focus on these issues, even as the size of the military is slashed and our veterans are returned from wars overseas. When the wars are no longer front page news, the wounds our veterans suffer will still remain. They cannot suffer those wounds in silence, lost and forgotten from the attention of the government they honorably served. The voice of The American Legion and the voice of every veteran across America is vital in understanding the struggles they must overcome for basic compensation for the injuries and illnesses they incurred defending this nation.

Questions concerning this testimony can be directed to The American Legion Legislative Division (202) 861-2700, or [ideplanque@legion.org](mailto:ideplanque@legion.org)

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<sup>4</sup> American Legion Resolution No. 118 – Revision of Work-Rate Standards for Department of Veterans Affairs Adjudicators – AUG 2012