

VETERANS' DISABILITY BENEFITS COMMISSION

Meeting Minutes

Date: Wednesday, July 18, 2007 - Friday, July 20, 2007

Location: Washington Plaza Hotel
10 Thomas Circle, N.W., Washington, DC 20005

Attendees:

Chair:

Chairman James Terry Scott, LTG, USA (Ret)

Members:

Nick D. Bacon, 1SG, USA (Ret)

Larry G. Brown, COL, USA (Ret)

Jennifer Sandra Carroll, LCDR, USN (Ret)

Donald M. Cassiday, COL, USAF (Ret)

John Holland Grady – Absent, Friday, July 20, 2007 only

Charles “Butch” Joeckel, USMC (Ret)

Ken Jordan, COL, USMC (Ret)

James Everett Livingston, MG, USMC (Ret)

William M. Matz, Jr., MG, USA (Ret)

Dennis Vincent McGinn, VADM, USN (Ret)

Rick Surratt (former USA)

Joe Wynn (former USAF)

Staff:

Ray Wilburn, Executive Director

Ed Andersen

Conrad Anderson

Jacqueline Garrick

Kathleen Greve

John Harlepas

Mike McGeary

Steve Riddle

Dietra Shepherd

Laura Sivitz

Paul Stepnowsky

Kurt Von Tish

Jim Wear

Don Zeglin

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Topic	Key Points	Supporting Materials
July 18, 2007		
Opening Remarks Chairman Scott	The Chairman opened the meeting at 8:30a.m. He noted that the Commission intends to meet its deadline. He announced staff changes and reviewed the agenda. He announced that the National Guard and Reserve Commission session has cancelled and that the Institute of Medicine (IOM) Presumption Report is not ready.	
June 7-8, 2007 Meeting Minutes	Commissioners Livingston moved and Carroll seconded the adoption of the minutes, which were approved by unanimous vote.	Minutes
Opening Statements	<p>Commissioner Grady addressed the challenges he saw the Commission facing due to the delay in the IOM Presumption Report.</p> <p>Commissioner McGinn requested that information from other commissions and task forces be tracked and added into the Final Report where appropriate.</p> <p>Chairman Scott noted that there are over 300 pieces of legislation and the Commission will only concern itself with those that become law.</p> <p>Commissioner Bacon voiced his concerns with not having enough time to consider the IOM study group reports.</p> <p>Commissioner Carroll requested that the contracts with IOM and Center for Naval Analyses (CAN) be reviewed for deliverable dates. She also suggested inviting VA Secretary Nicholson to appear before the Commission.</p>	
Issue Paper Status Update & Final Decisions Mr. Ray Wilburn	<p>Mr. Wilburn provided a review of the following papers. Previous tentative decisions were voted on to be the final position of the Commission:</p> <p>Line of Duty (RQ#13) - Commissioners Surratt moved and Cassidy seconded to <i>endorse the current definition and to endorse the current policy on rates of compensation</i>. Motion carried by a 12 to 1 (Grady) vote.</p> <p>Pending Claim (RQ#19) - Commissioner Cassidy moved and Bacon seconded to <i>endorse allowing the veterans' survivors, but not creditors, to pursue a veterans due but unpaid benefits and any additional benefits by continuing the claim which was pending when the veterans died, including presenting new evidence not in VA's possession at the time of death</i>. Motion carried by a 13 to 0 vote.</p> <p>Time Limit to File (RQ#18) – After some discussion regarding the quality of the VA briefings</p>	Slides

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<p>Issue Paper Status Update & Final Decisions (continued)</p>	<p>and incentives, Commissioners Matz moved and Jordan seconded to <i>endorse the current standard of an unlimited time limit for filing an original claim for service connection AND to endorse providing a mandatory VA benefits briefing to all separating military personnel, including Reserve and National Guard components, prior to discharge from service.</i> Motion carried by a 13 to 0 vote.</p> <p>Lump Sum (RQ#10) – Commissioners Carroll moved and Brown seconded to reaffirm that <i>a lump sum payment is not currently a viable option to compensate veterans for their disabilities and should not be considered.</i> Motion carried by a 13 to 0 vote.</p> <p>Duty to Assist (RQ#22) – Commissioners McGinn moved and Carroll seconded to <i>require a review by VA of the current process, procedures, and all communications to ensure that they are efficient and effective from the perspective of the veteran. VA should consider amending VCAA letters by including all claim-specific information to be shown on the first page and all other legal requirements would be reflected, either on a separate form or on subsequent pages. In particular, VA should use plain language in stating how the claimant can request an early decision in their case.</i> Motion carried by a 13 to 0 vote.</p> <p>Apportionment/Garnishment (RQ#24) – Commissioners Carroll moved and Jordan seconded to recommend that <i>VA disability benefits [including TSGLI (Traumatic Servicemembers' Group Life Insurance)] except VA compensation benefits received in lieu of military retired pay, should not be considered in state-court spousal support proceedings.</i> Motion carried by a 12 to 1 (Grady) vote.</p>	
<p>Government Accountability Office (GAO): VA & DoD Information Technology (IT)</p> <p>Ms. Valerie Melvin, Director, Human Capital and Management</p> <p>Accompanied by: Ms. Barbara Oliver</p>	<p>Ms. Melvin explained that the GAO has previously monitored VA and DoD IT efforts, and found that the Departments have made progress, but there is still a great deal that needs to be done in the short and long-term. VA has achieved IT integration, but DoD still faces challenges standardizing the branches. VA and DoD have not yet developed an overall strategy or a detailed project management plan to guide their various efforts towards achieving a comprehensive seamless exchange of health information. GAO has recommended that there be a detailed project management plan to guide efforts and identify a lead entity.</p>	<p>GAO Report</p> <p>Slides</p>
<p>Issue Paper Status Update & Final Decisions (continued)</p>	<p>Reasonable Doubt (RQ#15b) – Commissioners McGinn moved and Livingston seconded to <i>endorse</i></p>	

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<p>Issue Paper Status Update & Final Decisions (continued)</p> <p>Mr. Ray Wilburn</p>	<p><i>the current standard.</i> Motion carried by a 12 to 0 vote (Carroll absent from vote).</p> <p>Character of Discharge (RQ#23) – After some discussion, Commissioners Surratt moved and Matz seconded to <i>accept the current standard.</i> The motion failed by a 5 to 7 (Livingston, Grady, McGinn, Bacon, Brown, Carroll, and Jordan) vote. (Chairman abstained) Jordan then moved and McGinn seconded to <i>endorse changing the Character of Discharge standard to require that when the individual is discharged from his/her last period of active service with a Bad Conduct or Dishonorable discharge that it bars all benefits.</i> Motion carried by a 9 to 4 (Cassiday, Matz, Wynn, Surratt) vote.</p> <p>Age as a Factor (RQ#15a) – After considering new material provided by CNA, Commissioners Bacon moved and Joeckel seconded to <i>adopt the current standard that age not be a factor in service connection compensation.</i> Motion failed by a 1 (Wynn) to 12 vote. Commissioners Grady then moved and Carroll seconded to adopt a new option to recommend that <i>age should not be a factor for rating service connection and for rating severity of disability, but may be a consideration in setting compensation rates.</i> Motion carried by a 13 to 0 vote.</p>	
<p>VSO Panel: Transition Issues (RQs #26-31); Vocational Rehabilitation & Employment (VR&E) (RQ#17); and Ancillary & Special Purpose Benefits (RQ#20)</p> <p>Mr. Ron Chamrin The American Legion</p>	<p>Mr. Chamrin presented the position of The American Legion. They opposed any effort that would take benefits away from any group of veteran, especially based on age. The organization is very supportive and involved in recognizing older workers. They did encourage the use of VR&E Counselors in assessing veterans for employment, especially in improving coordination with and funding for Labor's VETS program, but cautioned that only a medical doctor is qualified to determine IU. The Legion recommended that there be better funding and additional counselors to meet VR&E demands and outlined a list of veteran's complaints. The American Legion supported the findings of the Ancillary paper and would accept options two, three, four, six, seven and/or eight. In considering the Transition report, the Legion was primarily in agreement with the findings. They were cautionary in the use of Automated Decision Support Systems and Vet Center information in the claims process. The Legion supports CRSC (Combat-Related Special Compensation) for injured with less than 20 years, extension of the TSGLI, IT enhancements, realignment of a VA/DoD disability evaluation</p>	<p>American Legion Testimony</p>

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<p>Mr. Brian Lawrence Disabled American Veterans (DAV)</p>	<p>system and additional support for Family Services (including employment), while opposing TRICARE fee increases and the closure of Walter Reed.</p> <p>The DAV reviewed the IOM report in detail. They outlined their concerns with making changes to the rating schedule. The DAV did not see using earning comparisons as a valid measure of the VASRD (VA Schedule for Rating Disabilities).</p> <p>The DAV also provided comments regarding the Ancillary benefits paper and primarily concurred with recommendations to bring the benefits in line with current costs and to expand eligibility where required to certain omitted categories of veterans. The DAV would oppose any consideration given to age and is concerned that veterans who are suffering from age-related illnesses might be pushed into voc rehab. They also opposed mandatory VR&E screening for IU (Individual Unemployability) cases and saw VR&E counselors as unqualified to make such determinations. In regard to transition, the DAV agreed with most of the options except for the 1st and 5th regarding VA/DoD collaboration. The DAV opposed a single exam process since lines of authority, adjudication, and appeals could not easily be seen. DAV proposed a single board process within DoD that oversees all of the branches and ensures a consistent application of the VASRD.</p>	<p>DAV Testimony</p>
<p>Mr. Jerry Manar Veterans of Foreign Wars (VFW)</p>	<p>Mr. Manar responded the Commission Transition Report by noting its comprehensiveness and voiced agreement with the problems with coordination between VA, DoD, SSA (Social Security Administration) and DOL (Department of Labor). He suggested that all of the options were doable and suggested that the Commission highlight its priorities. He then turned his attention to the VR&E paper and commented that IU evaluators would need to be trained before mandating that such a function be taken on by voc rehab counselors. He advocated for eliminating the 12 year eligibility limit. He also suggested the there be a VR&E assessment during the MEB/PEB (Medical Evaluation Board/Physical Evaluation Board) process. But, noted that current caseloads are too high and none of this could get accomplished without additional staffing. Finally, he noted that the ancillary benefits have eroded in value over the years and the veteran has had to subsidize the benefit. Congress should adjust the auto benefit back to its 80% value and that the housing benefits have not kept pace with the cost of housing. There should also be a SMC (Special</p>	<p>VFW Testimony</p>

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	<p>Monthly Compensation) modifier for QOL (Quality of Life). The VFW would support all options, but the status quo.</p>	
<p>Public Comment: Ms. Sue Frasier, Veterans for Justice Mr. Michael Parker</p>	<p>She endorsed the Commission's list of priorities highlighted in a previous session. Seamless Transition and disabilities should be on top and not PTSD. She also voiced concern that the IOM reports and CNA analyses have not been completed prior to the Commissions' deliberation on certain issues.</p> <p>Mr. Parker discussed the Wounded Warrior legislation.</p>	
<p>Issue Paper Decisions: - Survivor Concurrent Receipt (SCR) - Concurrent Receipt (CR) Mr. Jim Wear Ms. Kathleen Greve Mr. Don Zeglin, Esq. Mr. Conrad Anderson, Esq.</p>	<p>Mr. Wear reported on the number of surviving spouses and the amount of the SBP offset, which would cost \$660 million in one year.</p> <p>After some discussion, Commissioners Matz moved and Carroll seconded <i>to eliminate the SBP/DIC offset of survivors of retirees and in-service deaths.</i> Motion carried by an 11 to 2 (Grady, McGinn) vote.</p> <p>Staff presented a new approach to the CR issue. They defined the four basic groups of service members [Longevity Retirees, Medical Retirees, Medical Separations, TERA (Temporary Early Retirement Authority) Retirees] and eligibilities and discussed the overarching issues (i.e., combat related, years of service, and percentage of disability).</p> <p>Commissioners Matz moved and Surratt seconded to <i>endorse a "full concurrent receipt" option that includes option 3 and further; Expands the eligibility of Concurrent Receipt of Disability Payment (CRDP)/CRSC to disability retirees (Chapter 61) with less than 20 years of service using the same 2.5% per years of service formula applied under current law to Chapter 61s with more than 20 years of service. Expands CRSC eligibility to TERA retirees (currently eligible for CRDP only).</i> It was a 6 to 6 (Scott, Livingston, Grady, Bacon, Brown, and Carroll) vote with McGinn absent. Motion failed with no majority.</p> <p>Subsequently, Commissioners Surratt moved and Livingston seconded to <i>endorse continuing to allow an annual election of CRDP or CRSC for those with dual eligibility, remove the current tiered approach and expand to veterans rated 10 through 40 percent which will allow receipt of: the amount of his/her military longevity retired pay that had been offset by VA disability compensation that would be paid as</i></p>	<p>CR Presentation SCR Presentation</p>

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	<i>CRDP, the balance if any, of their longevity retired pay and VA compensation. Motion carried by a 7 to 4 (Matz, Wynn, Grady, Jordan) vote with Joeckel abstaining and McGinn absent.</i>	
Chairman's Close Chairman Scott	The Chairman adjourned the meeting at 4:41p.m.	

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July 19, 2007		
Opening Remarks Chairman Scott	The Chairman opened the meeting at 8:35a.m. with an overview of the day's agenda.	
Opening Comments	<p>Commissioner Joeckel expressed his reservations about the CR vote that did not include the young men and women disabled in today's war and did more for widows than for service members with amputations and TBIs (Traumatic Brain Injuries).</p> <p>Commissioner Grady commented on a <i>NY Times</i> article from July 5th that highlighted the mental health problems of contractors working in Iraq.</p> <p>Commissioner Matz voiced his disappoint in the CR vote, which denied Concurrent Receipt to those young catastrophically wounded service members. He pointed out that this is the same age group that is under-compensated and asked why we would want to exclude them from CR. He requested that this issue be revisited before the Final Report is completed.</p>	
CNA Executive Summary of Final Report Ms. Joyce McMahon, PhD Mr. Eric Christensen, PhD	<p>The CNA Final Report will be delivered to the Commission on July 31. It will contain their analyses of veterans' and survivors' earning losses & quality of life survey, lump sum, Raters & VSO survey, program comparisons, and DoD/VA ratings.</p> <p>Dr. McMahon and Dr. Christensen reviewed the findings that will be included in their report and highlighted such issues for veterans and survivors as earnings ratios and parity for the mentally disabled and younger veterans, implicit QOL, problems with the rating schedule and the complexity of the process. CNA highlight its options for Commission consideration, such as adjustments for parity, SMC for QOL and for data collection and storage.</p>	Report Presentation
Analysis of Differences in VA Disability Compensation Institute for Defense Analyses (IDA): Mr. David Hunter, Project Leader Accompanied by: Kristen Guerrero Brian Riesksts	According to Mr. Hunter, VA contracted with IDA to study the 57 Regional Office variances in disability ratings. IDA found that Post-Traumatic Stress Disorder (PTSD), power of attorney representation (with a VSO), and period of service were contributing factors to variations, along with county median family income, population percentage with mental disability and population density. Additionally, military retirees were four times more likely to receive compensation. IDA recommended: standardize initial/on-going training for rating specialists, standardize the medical evaluation process, increase oversight and	IDA Executive Summary IDA Presentation

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<p>VA Response Mr. Brad Mayes, Director, VA Compensation & Pension (C&P) Service</p> <p>Mr. Tom Pamperin, VA Deputy Director, C&P Service</p>	<p>review of rating decisions, consolidate and centralize rating activities, develop and implement metrics to monitor consistency in adjudication, and improve and expand data collection.</p> <p>VA reviewed the six recommendations by IDA and reported on their on-going efforts regarding training, Statistical Technical Accuracy Review (STAR), exam templates, activity consolidations and efforts to expand data captures, which were seen by VA as steps at alleviating the variances.</p>	
<p>VA/DoD Joint Disability Evaluation System (DES) Process</p> <p>Mr. Bill Carr, DoD, Acting Deputy Under Secretary, Personnel & Readiness</p> <p>Mr. Sam Retherford, DoD Personnel & Readiness</p> <p>Mr. Paul Williamson, Consultant</p> <p>Mr. Tom Pamperin, VA C&P Services</p>	<p>Mr. Carr described the joint DES pilot Line of Action (LOA) committee that he and Mr. Pamperin are co-chairing to create a single disability evaluation process. The Senior Oversight Group (SOG) is being directly chaired by Secretaries England and Mansfield. He described the current DoD DES and the secondary process that then begins at VA once a service member becomes a veteran. The recent attention on the disparity in ratings, and the IRG (Independent Review Group) and GWOT (Global War on Terror) Task Force recommendations for one physical/one rating has resulted in a VA and DoD test pilot study, whereby service members found unfit for specific disability(ies) by the MEB, would then be rated by VA for all claimed disabilities. The PEB would get the rating, and determine fitness for duty. Rating differences will disappear because there will only be one rating, which will also take less time since it will be done concurrently. There is a Levin/Akaka bill that would give DoD and VA the pilot authority to go outside of titles 10 & 38. They hope to begin the pilot in August.</p> <p>Mr. Retherford also noted that the test would also include the Joint Retention Board process that each branch now does separately in order to standardize fit/unfit standards.</p>	
<p>VA/DoD Response to IOM PTSD Diagnosis and Compensation Studies</p> <p>Ms. Antoinette Zeiss, PhD, VA Deputy Chief Consultant, Mental Health Services</p> <p>Mr. Brad Mayes, Director, VA C&P Service</p>	<p>Dr. Zeiss responded to two of the IOM Reports. First she highlighted the findings in the <i>PTSD: Diagnosis and Assessment Report</i>. This report offered no recommendations to VA and confirmed the VA guidelines already in place. VA uses current Diagnostic and Statistical Manual (DSM) and conducts face to face interviews. There are current directives on time allocation and training on diagnosis and assessment tools and instruments.</p> <p>In the second IOM report, <i>PTSD Compensation & Military Services</i>, there were 12 recommendations</p>	<p>VA Recommendations</p>

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Ms. Ellen Embry, Deputy Assistant Secretary, DoD	<p>for VA. Dr. Zeiss and Mr. Mayes reviewed these in tandem and focused on training for examiners and certification issues, testing, PTSD data, the need for PTSD rating criteria, re-examination scheduling, gender-specific data, especially for sexual assault, and research. VA deferred its comments on establishing a minimum level of benefit until this Commission reports.</p> <p>Ms. Embry provided comments only on the IOM <i>PTSD: Diagnosis and Assessment Report</i>. DoD concurred with the basic findings and reported on their activities to improve mental health services throughout the branches and in theater. DoD uses the <i>Clinical Pathways</i> developed with VA and conducts pre and post deployment screenings. However, these tools have not yet been validated. The DoD Mental Health Task Force found that there is no common view or definitions between the branches, so developing standards and training is difficult. DoD is developing a model that is resiliency and prevention based.</p>	DoD Recommendations
Guiding Principles Chairman Scott	The chairman reviewed the eight Guiding Principles of the Commission with suggested changes and comments. Commissioners Bacon moved and McGinn seconded to approve the Guiding Principles as read in the meeting. Motion carried by a 12 to 0 vote (Grady absent).	Presentation
Chairman's Close Chairman Scott	The chairman adjourned the meeting at 5:24pm.	

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Final Report Update Ms. Jacqueline Garrick	Ms. Garrick reviewed the sections of the Final Report that have been transmitted to the Commissioners for their review, and the work in progress by the staff. She outlined a time frame for the July, August, and September. Commissioners provided their feedback and suggestions for the Final Report sections, and requested a public relations/distribution plan be developed.	Presentation
Closing Comments	None	
Closing Remarks Chairman Scott	The chairman announced that there would be a closed administrative meeting and adjourned the meeting at 9:26a.m. The next meeting of the Commission will take place on August 8-10 at the Hotel Washington located at 15 th Street and Pennsylvania Avenue, N.W.	

The minutes of the July 18-20, 2007 meeting were unanimously approved by the Commissioners in attendance at the August 8, 2007 meeting in Washington, DC.