

VETERANS' DISABILITY BENEFITS COMMISSION

Meeting Minutes

Date: Wednesday, February 21 – Thursday, February 22, 2007

Location: Washington Hotel
15th & Pennsylvania Ave, NW
Washington, DC 20004

Attendees:

Chair:

Chairman James Terry Scott, LTG, USA (Ret)
William M. Matz, Jr., MG, USA (Ret) - Thursday, February 22, 2007 only

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
Charles "Butch" Joeckel, USMC (Ret) – via phone
Ken Jordan, COL, USMC (Ret)
Dennis Vincent McGinn, VADM, USN (Ret)
Rick Surratt (former USA)
Joe Wynn (former USAF)

Absent:

Chairman James Terry Scott, LTG, USA (Ret) - Thursday, February 22, 2007 only
Charles "Butch" Joeckel, USMC (Ret) – Thursday, February 22, 2007; afternoon only
James Everett Livingston, MG, USMC (Ret)

Staff:

Ray Wilburn, Executive Director
Ed Andersen
Conrad Anderson
Jacqueline Garrick
Kathleen Greve
John Harlepas
Steve Riddle
Dietra Shepherd
Paul Stepnowsky
Kurt Von Tish
Jim Wear
Don Zeglin

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	<p>physicians and medical personnel involvement. Both reported timeliness and obtaining evidence as challenges. Raters were also challenged by the lack of training and assigning degree of disability. Raters cited neurological, musculoskeletal, and mental disorders as difficult to rate because of their subjective nature and lack of criteria. Standardization in mental health was seen as necessary and better criteria for Individual Unemployability (IU). Both saw resolving medical and legal aspects as difficult. Both rated coordination as good. They were split on how they viewed quality of life ratings. They were similar on how they saw veterans' expectations of the process as unrealistic. Next steps include completing the survey analysis and writing the report.</p> <p>Commissioner Carroll requested a better definition of "unrealistic expectations" on the part of the veteran.</p>	
<p>Issue Paper Status Update Mr. Ray Wilburn</p>	<p>Mr. Wilburn gave an update on the status of the Commission issue paper process and an overview of where each issue stands.</p>	<p>Issue Paper Process Update</p>
<p>Tentative Option Approval (Step 7): Line of Duty (LOD) - Research Question 13 Mr. Jim Wear</p> <p>Character of Discharge (COD) – Research Question 23 Mr. Steve Riddle</p> <p>Lump Sum – Research Question 10</p>	<p>Mr. Wear provided updates and comments from the VSOs on LOD. He reviewed two options before the Commission on LOD and then the two subsequent options on compensation.</p> <p>After some Commission discussion, Commissioners Carroll motioned and Cassiday seconded to tentatively select option one for LOD and compensation. Motion carried by unanimous vote.</p> <p>Mr. Riddle reviewed the COD issues, particularly for those veterans who have had multiple periods of service and then a dishonorable discharge. The VSOs recommended that the Commission endorse the current COD standard and no changes were made to the issue paper. The findings included a discussion on the definition of a veteran and VA's authority to make discharge determinations. Mr. Riddle discussed options to change or maintain the COD rule.</p> <p>The Commission discussed the issue further and Commissioners Surratt motioned and Matz seconded to tentatively accept option one. Motion carried by unanimous vote.</p> <p>Mr. Wear reviewed the status of the Commission's stance on lump sum. He updated the legal review with comments from VA General Counsel that</p>	<p>LOD Slides</p> <p>Character of Discharge Slides</p> <p>Lump Sum Slides</p>

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<p>Mr. Jim Wear</p> <p>Concurrent Receipt (CR) – Research Question 21</p> <p>Mr. Jim Wear</p>	<p>included the difficulty with offsetting payments or protecting veterans or dependents. In cases of overpayment or other debt, it would be easier to collect from a reoccurring payment. The Commission previously decided that lump sums not be considered.</p> <p>There was a brief discussion and Commissioners Bacon motioned and Cassidy seconded to sustain the previous Commission recommendation on lump sum. Motion carried by unanimous vote.</p> <p>Mr. Wear reviewed the updates to the CR issue paper to include adding the Chapter 61 and the Temporary Early Retirement Authority (TERA) retirees.</p> <p>The chairman described the options as presented as indecipherable and inconsistent. He asked that they be rewritten in order from most restrictive to most liberal with examples included. Commissioners Surratt motioned and Matz seconded that this issue be tabled until changes can be made. Motion carried by unanimous vote.</p>	<p>Concurrent Receipt Slides</p>
<p>Initial Discussion (Steps 1 and 2):</p> <p>Transition Report</p> <p>Ms. Jacqueline Garrick</p>	<p>Ms. Garrick presented the Transition Report, which covered Commission research questions 26-31. She discussed risks (i.e.: homelessness, incarceration, unemployment, divorce, mental illness) that can arise from unsuccessful transition. She then discussed the policies and programs in place within VA, DoD, DOL, and SSA that are designed to assist in transition, such as the activities of the VA/DoD Joint Executive Council (JEC), Benefits Delivery at Discharge (BDD), Transition Assistance Program (TAP) classes, and IT interoperability. Additionally, Ms. Garrick explored programs unique to DoD, such as those for the severely injured and their families. She reviewed assessments by GAO that found a lack of DoD oversight for these programs, as well as for the Disability Evaluation System (DES). There have been multiple concerns with DES inconsistencies and unreliable data. Health care provisions were also discussed in relation to disability. Areas of concern were not only with the DES, but also with Tricare and then with VA access to care, and C&P exams. Proposed recommendations include: the use of a single exam, DOL & SSA at the JEC, increased use of IT and artificial intelligence, improvements in DoD oversight and tracking of disabled service members, VA authority for family services, a DoD Office for Seamless Transition, and enhancing Guard and Reserve opportunities for TAP and BDD.</p>	<p>Transition Report Slides</p>

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	<p>After some discussion, the Commissioners requested that a matrix be created that highlighted the research questions, each program, entity responsible for action, and funding, and that a glossary also be included in the report.</p>	
<p>Draft Site Visit Report Update Ms. Jacqueline Garrick</p>	<p>Ms Garrick reviewed the revisions and corrections to the Site Visit Summary Report that the Commission requested during the January 2007 meeting.</p> <p>Commissioners McGinn motioned and Carroll seconded to delete comment added to the town hall section. Motion carried by unanimous vote. The Commission also agreed to delete the reference to the state of Georgia and in general acknowledge the important role of the states. Given these modifications, Commissioners Carroll motioned and Brown seconded to accept the Site Visit Summary Report. Motion carried by unanimous vote.</p>	<p>Site Visit Slides Update</p>
<p>Review and Approve for Public Comment (Step 5): Pending Claim Ends with Death – Research Question 19 Mr. Jim Wear</p>	<p>Mr. Wear gave an overview of the legal analysis and case examples of when a veteran dies while his/her case is pending and there is a survivor. He reviewed the comments from VA General Counsel and the technical assessment provided by C&P Service. In his findings, Mr. Wear stated that changing the law could increase the burden on VA, could transform VA compensation into property, and that currently accrued benefits are paid at the time of a veteran's death. Additional information was provided on the Padgett court decision. Options presented to the Commission included endorsement of the current law or to amend the law to allow a survivor to continue a veteran's claim after his/her death.</p> <p>The Commission found inconsistencies with the slides and the report and disregarded the findings and options provided. They requested that staff rewrite the options section and add a third option prepared by Commissioner Carroll.</p>	<p>Pending Claim Ends with Death Slides</p>
<p>Closing Comments</p>	<p>Commissioners McGinn requested a future discussion on how the Final Report will make an impact and Grady requested a briefing on Special Monthly Compensation</p>	
<p>Chair's Close</p>	<p>The chair adjourned the meeting at 5:55pm.</p>	

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Opening Remarks Commissioner Matz, Acting for Chairman Scott	The chair opened the meeting at 8:36a.m. with welcoming remarks and review of the agenda.	
Institute of Medicine (IOM) Update Rick Erdtmann, MD	<p>Dr. Erdtmann acknowledged the absence of the IOM study directors who were all working on their committee support assignments. He then began with a discussion on the Medical Evaluation Committee activities. It has had its 5th meeting, reviewed preliminary findings and recommendations, and has analyzed VA data. Its report should be ready for review Feb/March.</p> <p>Next, he focused on the Presumption Committee activities. It also held its 5th meeting, and a conference call. The committee is finalizing its report for review and dissemination.</p> <p>Dr. Erdtmann then went on to discuss the PTSD Compensation Committee. It has drafted a report and it is ready for peer review.</p> <p>Finally, he reported that the Treatment Committee has held its initial meeting and was briefed by VA and other experts on research on treatment options and clinical challenges and opportunities. This committee is due to report in July.</p> <p>Commission discussion focused on future briefings and the IOM process.</p>	IOM Slides
Military and Veterans Service Organizations Panel: Time Limit to File & Survivor Concurrent Receipt Gold Star Wives Ms. Edith Smith The American Legion Mr. Steve Smithson	<p>On behalf of the Gold Star Wives, Ms. Smith gave the Commission a historical accounting of the DoD Survivor Benefit Plan (SBP) and the VA Dependency and Indemnity Compensation (DIC) and its offset. Gold Star Wives opposes the offset and advocates its appeal. They believe that surviving spouses of those who die on active duty should not be denied full SBP provided to other widows simply because the service member died before being able to pay premiums. She also called for widows to have the opportunity to reassign SBP after the child option ends. Gold Star Wives supports option two.</p> <p>Mr. Smithson presented the position of the American Legion on the Commission's released issue papers. The American Legion adamantly opposed any changes that would limit a veteran's ability to file a VA claim and endorsed the current standard. He cited problems with transition and the non-adversarial nature of the current process as</p>	

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<p>Mr. Mike Duggan</p> <p>The Military Coalition Survivor Committee, Co-Chairs</p> <p>Ms. Kathleen Moakler, National Military Family Association</p> <p>Ms. Deirdre Holleman, The Retired Enlisted Association</p> <p>Veterans of Foreign Wars (VFW)</p> <p>Mr. Gerald Manar</p>	<p>reasons to not change the current statute.</p> <p>Mr. Duggan presented the organization's position on Survivor Concurrent Receipt and refuted some of the arguments against eliminating the offset highlighted in the Commission's paper. He described the SBP and DIC programs as two separate entities that exist for different reasons and that the offset between them is unfair and unjust to widows. The American Legion proposed the elimination of the offset, and that survivors of active duty deaths should not be subject to the offset, even if no premiums were paid. The non payable portion of the SBP premium should continue to be refunded when DIC is received. Mr. Duggan drew parity to Concurrent Receipt legislation for the survivors.</p> <p>Ms. Moakler addressed issues with the financial security of survivors and how the SBP/DIC offset impacts them. She cited these as distinct programs with different purposes. She also addressed the Commission's discussion on how widows could potentially receive more than the service member earned by stating how rare that would be.</p> <p>Ms. Holleman followed up by discussing what the expectation of the service member was when he/she elected SBP and the SGLI. Those only getting the DIC are expected to live on \$13,000 a year. Spouses don't have an opportunity to develop their own careers or retirement plan. They move frequently supporting the military mission. They also care for disabled husbands, leaving jobs and saving the government money on their care. These veterans are uninsurable in the private sector. TMC supports ending the offset.</p> <p>Mr. Manar began by simply stating that the VFW supports the elimination of the SBP-DIC offset.</p> <p>He then focused his comments on the Time Limit to File issue. He demonstrated the numbers of veterans leaving the service (almost 300,000) versus the numbers who filed claims at BDD (40,600) with a potential for many of them to file claims in the future. He also gave examples of military occupations that are high risk for exposures that could take years for illnesses to develop. Time limits are no way to address the backlog issue.</p>	

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<p>Public Comment: Issue Papers (Step 6) & General</p> <p>Ms. Michelle Fitz Henry</p> <p>Ms. Nichole Haycock</p> <p>Mr. Michael Parker</p> <p>Ms. Sandra Drew</p> <p>Ms. Kay Witt</p> <p>Ms. Marty Talbot-Haverkamp</p> <p>Mr. John Vogel</p> <p>Ms. Martha Douthit</p> <p>Ms. Patricia Sharp</p>	<p>Voiced support for Survivor Concurrent Receipt.</p> <p>Voiced support for Survivor Concurrent Receipt.</p> <p>Outcomes of DES cases between 2000 and 2005.</p> <p>Voiced support for Survivor Concurrent Receipt</p> <p>Voiced support for Survivor Concurrent Receipt.</p> <p>Voiced support for Survivor Concurrent Receipt.</p> <p>SGLI is not a gratuitous benefit. It is premium based.</p> <p>Voiced support for Survivor Concurrent Receipt.</p> <p>Voiced support for Survivor Concurrent Receipt. She also discussed remarriage after age 57 and reported there is a group preparing to file a lawsuit against DoD.</p>	
<p>Initial Discussion (Step 1)</p> <p>Reasonable Doubt – Research Question 15b</p> <p>Mr. Steve Riddle</p>	<p>Mr. Riddle offered a historical perspective on the Reasonable Doubt standard, which dates back to before the Civil War and was instituted by Congress in 1933. He identified the standard as fair, supported by the VSO, and without controversy. There have been minor references to it in some reports and in legislation, but no substantial changes have been made. Options for Commission consideration include the status quo, or adding additional requirements for proof.</p> <p>Commissioners McGinn motioned and Cassidy seconded to eliminate this research question from further exploration. Motion carried by unanimous vote.</p>	<p>Reasonable Doubt Slides</p>
<p>Commission Discussion</p>	<p>Commissioners agreed that they would like to have additional panels that focused on the VA Rating Schedule, especially after study findings. Thank you replies should be going to all those who have emailed about SCR and other issues. A final report outline should be presented at the next meeting.</p>	
<p>Chair's Close</p> <p>Commissioner Matz</p>	<p>The chair announced that the March meeting will be held at the Hamilton Crowne Plaza from the 22nd-23rd. He adjourned the meeting at 2:26pm.</p>	

The minutes of the February 21-22, 2007, meeting were unanimously approved by the Commission members in attendance at the March 22, 2007, meeting in Washington, DC.

8-Step Issue Paper Process

1. (Staff) Prepare an initial draft Issue Paper using research and legal analyses information.
2. (Commissioners) Review, comment, and revise the initial draft Issue Paper at a public meeting.
3. (Program & Legal Experts) Conduct technical review to ensure thoroughness and accuracy.
4. (Staff) Revise the draft Issue Paper to incorporate input from Steps 2 and 3.
5. (Commissioners) Release the document for posting on the Commission's website and dissemination to stakeholders.
6. (Stakeholders & Public) Provide written or verbal comments via email, letters, statements or testimony before the Commission. Time will be set aside at public meetings to receive input on each topic.
7. (Commissioners) Deliberate and tentatively approve an option on each research question at a public meeting.
8. (Commissioners) Review and finalize Issue Papers after consideration of appropriate information and data from CNA or IOM or other sources.