

**Veterans' Disability Benefits Commission
Meeting Minutes**

Date: Friday, July 22, 2005

Attendees:

Chairman

James Terry Scott, LTG, USA (Ret.)

Members

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

Jennifer Sandra Carroll, LCDR, USN (Ret)

John Holland Grady

Charles "Butch" Joeckel, USMC (Ret)

Ken Jordan, Col., USMC (Ret)

James Everett Livingston, MG, USMC (Ret)

Dennis Vincent McGinn, VADM, USN (Ret)

Rick Surratt

Joe Wynn

Topic	Key Points	Supporting Materials
Opened at 8:30 a.m.		
<p>Opening Remarks</p> <p style="padding-left: 40px;">Chairman Scott</p> <p>Subcommittee Reports</p> <p style="padding-left: 40px;">Commissioners Grady, Livingston, and McGinn</p>	<p>The meeting opened at 8:30 a.m. with welcoming remarks and a brief reiteration of the Commission's charter. The newest Commission member, Ken Jordan, Colonel, USMC (Retired), was introduced; each Subcommittee chairman provided a statement on the activities of the three Subcommittees.</p> <p>The Compensation, Duty/Service Connection, and Transition Coordination Readjustment Subcommittees each met separately on July 21, 2005.</p> <p>The Compensation Subcommittee discussed what benefits are appropriate with and without the constraints of current law. The Duty/Service Connection Subcommittee heard from individuals with extensive knowledge and experience about the Veterans Affairs (VA) compensation program. The Transition Coordination Readjustment Subcommittee received information on the transition of disabled active duty personnel to VA for medical services and benefits and recommends that the full commission address the issues of concurrent receipt and survivors benefits.</p>	
June 9, 2005, Meeting Minutes	On motion by Commissioner Livingston and seconded by Commissioner Carroll, the minutes were adopted.	

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<p>Address by VA Under Secretary for Benefits</p> <p>Honorable Daniel L. Cooper, VADM USN (Ret) Department of Veterans Affairs Under Secretary for Benefits</p>	<p>“Let there be no doubt our Veterans’ Benefits Program has the best mission of any program in our government today – we help deserving, disabled veterans.” I will speak to a few subjects that I believe you must, as a group, at least study and debate in order to try to get a full understanding of the complexities, which could lead to some improvements.</p> <p>The VA Disability Compensation Program has evolved from a long series of legislative actions, spanning most of a century. The incremental legislative process has had the effect of building an increasingly complex system.</p> <p>The Veterans Claims Assistance Act of 2000, that while proper and well-conceived, has been extraordinarily difficult to execute.</p> <p>The first question to debate: What is the purpose of the Disability Compensation Program? If you could provide some complete definition, some clarity, which would then bound the problem, your success would be assured.</p> <p>Second, the Commission should debate and provide an opinion on the recent proliferation of presumptive conditions and how VA should determine such conditions.</p> <p>Third, there is no differentiation between combat-related injuries, line-of-duty injuries (sports, motorcycles, untoward behavior) and those “normal” diseases which all of us experience as a result of age. The need for any such distinctions should, at least, be debated.</p> <p>Fourth, there is no time limit for a veteran to submit an initial claim for disability compensation. I recommend the Commission review and discuss this question.</p> <p>Fifth, Individual Unemployability (IU) is a topic that the Committee should understand and debate. GAO has stated in reports that IU is out of date with current U.S. society. Further, our regulation does not address the age beyond which a person might be precluded from applying for this benefit. On several occasions, veterans over 80 years of age have received IU the first time.</p> <p>Finally, the appeals process is cumbersome,</p>	<p><i>The Literature Review</i></p> <p><i>The Legislative History</i></p> <p>December 1996 Veterans Claims Adjudication Report</p> <p>Veterans Claims Assistance Act of 2000, 38 USC 5107(b)</p>

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	<p>extremely long, and relatively undisciplined. There are reviews at different levels, over a very long period. A contributing exacerbating factor is the ability and authority to have “new evidence” entered into the system at any time in the process. Streamlining of the appeals process is necessary.”</p> <p>Under Secretary Cooper was asked to provide the Commission a memorandum addressing staffing and centralization of functions to make the backlog of claims more manageable.</p>		
<p>Profile on Military Retirees</p> <p>Thomas Tower Assistant Director of Compensation Office of the Deputy Under Secretary of Defense, Military Personnel Policy</p>	<p>Military retirement provides DoD with a hiring and retention incentive for members to serve a 20- to 30-year career. Full 30-year career entitles retiree to 75 percent of base pay; retirement is available after 20 years at 2 and one-half percent of base per year served; and retirement on disability is available any time at 2 and one-half percent per year served or at percentage disability rating. Severance pay is granted equal to two months of basic pay per year served if disability rating is less than 30 percent. If disability rating exceeds 30 percent, member is retired.</p> <p>Total of 1,792,000 military retirees includes 1.43 million retired for length of service; 92,000 retired for disability, and 270,000 retired reservists. In addition non-disabled length-of-service retirees and reservists receive VA disability compensation (684,000), 56 percent of whose disabilities are rated 30 percent or less. Number of retirees has increased from 255,000 in 1960 to 1,700,000 in 2000, and costs are projected to grow from \$700 million in 1960 to \$36 billion in 2005 to \$90.9 billion in 2035.</p>		<p>Statistical Report of Department of Defense (DoD) Actuary</p>
<p>Public Comment Period</p>	<p>Leonard Selfon Vietnam Veterans of America</p>	<p>The current VA disability system is fundamentally good but needs updating, fine tuning, proper funding. Also, the current definition for line of duty process should remain unchanged.</p> <p>VA disability rating system is antiquated, imprecise, vulnerable to subjectivity, and overdue for wholesale revision.</p>	

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	Mark Olanoff Retired Enlisted Association	More outreach to VA claimants needed and Reservists should be treated better as parts of a total force.	
<p>Concurrent Receipt</p> <p>Thomas Tower Assistant Director of Compensation Office of the Deputy Under Secretary of Defense, Military Personnel Policy</p> <p>David McLenachen Policy Staff VA Compensation & Pension Service</p>	<p>Concurrent Retirement and Disability Payments, (CRDP) requires 20 or more years of creditable service and 50 percent or greater disability rating. Combat-Related Special Compensation (CRSC) also requires 20 creditable years and requires a DoD combat-related determination. These programs allow receipt of both military retired pay for longevity and VA disability compensation with no offset for receipt of VA benefits. Other military disability retirements remain subject to offset. Offset provisions are administered by VA under memorandum of understanding.</p> <p>CRDP was first authorized by the Defense Authorization Act of 2004, PL 108-136. It will be administered by DoD. It will be taxable, payable retroactive to January 1, 2004, and be phased in by the end of 2013. Eligible disabled military retirees with greater than 50 percent disability rating who retire on longevity from Reserves or regular military will receive full retired pay and full VA compensation.</p> <p>CRDP which was amended to eliminate phase-in for 100% disabled veterans, became effective on January 1, 2005. A determination for IU is still pending with DoD.</p>		<p>Defense Authorization Act of 2004, 10 USC 1414</p> <p>Ronald W. Reagan National Defense Authorization Act of FY 2005 , PL 108-375</p>
<p>DoD/VA Disability Rating Processes</p> <p>DoD Disability Evaluation System (DES)</p> <p>Terry L. Mintz Office of the Secretary of Defense, Military Personnel Policy</p> <p>Martin Tittle United States Army Physical Disability Agency (USAPDA)</p>	<p>DES identifies and removes DoD members by retirement or separation because of unfitness due to physical disability. Medical Evaluation Board (MEB) determines whether diagnosed medical condition fails to meet retention standards and, if so, refers member to Physical Evaluation Board (PEB) to decide fitness for duty.</p> <p>DES determines fitness for duty and compensation for careers cut short by disability. VA determines service connection for disabilities and compensation for loss of average civilian earning capacity.</p> <p>Army MEBs are convened at Military Treatment Facilities and are composed of at least two physicians and approved by the hospital Deputy Commander for Clinical Services. The MEB determines whether diagnosed medical condition fails to meet retention standards. A PEB is composed of a president, a</p>		<p>10 USC Chapter 61</p> <p>DoD Instructions 1332.38, 1332.39, Army Regulation 635-40</p>

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<p>Paul Williamson Physical Evaluation Board United States Navy</p> <p>Horace R. Carson U.S. Air Force Personnel Council</p> <p>VA Disability Rating Process</p> <p>Bradley Flohr Judicial/Advisory Review Staff Veterans Benefits Administration</p>	<p>personnel management officer, and a physician. It determines fitness for duty using medical and performance data. If the PEB finds a soldier unfit, it determines DoD disability compensation using the Veterans Affairs Schedule for Rating Disabilities (VASRD) only for those conditions determined to be unfitting. PEB findings may be appealed to the USAPDA. USAPDA results may be appealed to the Army Physical Disability Appeal Board</p> <p>Army's Temporary Disability Retirement List (TDRL) is utilized when disability is rated 30 percent or higher or the soldier has more than 20 years' service and is unstable for rating purposes. There is no change in rating while the soldier is on the TDRL up to a maximum of five years after which the disposition is permanent retirement, separation with severance pay, or individual found fit for duty.</p> <p>USAPDA's use of VASRD was modified to rate only conditions found to be unfitting, and PEB ratings are permanent. No VASRD "convalescent ratings are used by USADPA.</p> <p>Navy Disability evaluation system for fitness begins with informal PEB review of records. Medical conditions alone are not a basis for an unfit finding. Not every medical diagnosis is a disability. Next is a formal board process and modified use of VASRD for disability rating, which should not differ from VA disability rating for the same occupational condition rendering the member unfit.</p> <p>Air Force disability evaluation processes and dispositions are similar to those of other services.</p> <p>VA is required by law to provide a decision and a notice of procedural and appellate rights on every claim. The duty to assist includes notification and development of evidence. VA has no duty to assist applicants who are not veterans or to search for documents that are not clearly identified.</p> <p>Service connection may be on a direct basis or due to aggravation of a preexisting condition or as secondary to an already service-connected condition or on the basis of presumption. The current level of severity of a disability is identified by assessing all evidence, which may include a VA examination. Evaluations are predicated on the average impairment of earning capacity. The rating schedule is amended as needed.</p>	<p>Veterans Claims Assistance Act of 2000, 38 USC 5107(b)</p>

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The minutes of the July 22, 2005 meeting, as submitted, were unanimously approved by the Veterans' Disability Benefits Commission members at the Commission meeting conducted on August 26, 2005, in Washington, DC.