

**DEPARTMENT OF VETERANS AFFAIRS
ADVISORY COMMITTEE ON DISABILITY COMPENSATION**

**Minutes of the Session
October 30-31, 2008**

Present:

LTG James Terry Scott, USA, (Ret.), Chairman

Mr. Charles Battaglia

LTG Ronald Blanck, USA, (Ret.), D.O.

Mr. Robert Burke, Ph.D.

LTG Thomas Carney, USA, (Ret.)

Ms. Bonnie Carroll

Mr. Robert J. Epley

Major Daniel Gade

Mr. Richard T. Katz, M.D.

Ms. Deneise Turner Lott, J.D.

Mr. Edward R. Reese, Jr.

Mr. Keith Hancock, Compensation and Pension Service

Ms. Ersie Farber, Committee Manager and Designated Federal Officer

Victoria McLaughlin, McLaughlin Reporting (Court Reporter)

Present (October 30 only):

The Honorable James B. Peake, M.D., Secretary of Veterans Affairs

The Honorable Patrick W. Dunne, Under Secretary for Benefits

Mr. Phil Riggan, Advisory Committee Management Officer

Mr. Jonathan Gurland, Office of the General Counsel, Professional Group III

Ms. Ellen Peterson, Office of the General Counsel, Professional Group III

Mr. Bradley Mayes, Director, Compensation and Pension Service

Mr. Brad Flohr, Assistant Director, Policy

Ms. Vivian Drake, White House Liaison

Ms. Carolyn Bryant, Compensation and Pension Service

The administrative and organizational session was held in the Magnolia Room on October 30, and in the Chandelier Room on October 31 at the St Regis Washington, D.C., 923 16th and K Streets, NW, Washington, D.C. 20006.

General Scott called the meeting to order at 8:40 am, October 30, 2008. General Scott informed everyone this the official name of the committee is the Advisory Committee on Disability Compensation and the committee will be acting under the guidance of rules established and known as Federal Advisory Committee Act (FACA). He informed committee members that additional guidance will be provided by Hon. James Peake, Secretary of Veterans Affairs and Hon. Patrick Dunne, Under Secretary for Benefits and everyone will be brought up to speed on the current state of affairs. General Scott stated that the intent of the committee is to be a nonpartisan group that transcends this administration into

the next one and tries to ensure that a lot of the good things that have been developed over the last few years inside the Department of Veteran Affairs (VA), inside the Department of Defense (DoD), by the Veterans' Disability Benefits Commission (VDBC) and other commissions, doesn't get lost in the move to a new administration. f

General Scott concluded his welcome by introducing himself and allowing the others committee members to introduce themselves as well.

Mr. Riggin, Advisory Committee Management Officer, reviewed the requirements set forth by FACA. Mr. Riggin informed the committee that all Federal Advisory Committees must conduct open meetings, are required to put a 15 day advance notice in the Federal Register and that all deliberations are subject to public review (including reports, briefs and presentations).

General Scott suggested leaving 30-45 minutes at the end of every meeting for public comment and offering comment cards.

Lastly, Mr. Riggin reminded everyone that a subcommittee meeting could be held without public notice; however, such meeting must be summarized at the next public meeting of the committee.

General Scott opened the meeting to some general comments before additional briefings were scheduled to begin.

General Scott recessed the committee for a 15 minute break.

Mr. Battaglia highlighted to the committee that because the committee has been formed under congressional mandate, they have important milestones that will be need to be meet and suggested establishing a calendar for tracking.

General Scott agreed with Mr. Battaglia and assured the committee that Secretary Peake will be presenting additional guidance. General Scott informed the committee that three hot topics that he was aware of were; (1) VA's backlog of claims; and (2) VA's outdated Rating Schedule and the Veterans Administration Schedule for Rating Disabilities (VASRD).

Mr. Epley explained to the committee that the backlog of VA claims can be attributed to the growing veteran population, the outreach being conducted by the VA as well as internal processes associated with the development of evidence and the appeals process that hampers timeliness. Mr. Epley did mention some strides the VA has made in modernizing issues related to traumatic brain injuries (TBI).

Mr. Reese comments that similar strides have been made in connection with post traumatic stress disorder (PTSD) as well.

General Scott suggested that General Council provide the committee with a brief overview of the appellate process and that someone from the Institute for Medicine provide a synopsis of recently completed PTSD studies.

Major Gade asked for clarification on the number of re-submitted claims and the process behind re-submission.

Mr. Epley explained that a veteran can apply and reapply for benefits at anytime after separation from service and there is no limit to the number of claims filed. Mr. Epley highlighted some measures the VA, along with DoD, have taken to accurately and timely process original benefit claims through the Benefits Deliver at Discharge (BDD) process. However, Mr. Epley pointed to the estimated 300,000 to 400,000 supplemental claims the VA receives annually as a significant challenge.

General Scott suggested getting a one-page breakdown of the types of claims that make up VA's current backlog.

Mr. Jonathan Gurland, Office of General Counsel, provided the committee with an overview of Ethics Training.

Ms. Ellen Peterson, Office of General Counsel, provided the committee with an overview of Confidential Financial Disclosure (the committee was reminded by Ms. Farber that the signed version of the Confidential Financial Disclosure forms are due by November 14, 2008).

General Scott informed that committee that he will be running the meeting by the Robert's Rules of Order for small committees or organizations.

Hon. Patrick W. Dunne, Under Secretary For Benefits, informed the committee that additional members (up to 18) may be added to the committee and the budget (which will become more concrete as the committee progresses) should not be an issue.

The committee recessed for a short break awaiting the arrival of Secretary Peake.

Hon. James B. Peake, M.D., Secretary of Veterans Affairs welcomed and thanked the committee. Secretary Peake stated his big picture vision is to help the VA look forward and transition across administrations, to find really good plausible options in an environment where however it turns out, the committee may be able to go ahead and make some progress to position a system (VA) that really will support the veteran of the 21st century. Secretary Peake highlighted three areas of general interest: (1) transition payments; (2) quality of life issues; and (3) the VASRD. Secretary Peake also expressed his keen interest in the

automation of the VA system through paperless and electronic claims processing. He strongly believes this issue will lead to a modernization of the current system, employee accountability, the ability to observe and possibly aid in the reengineering of the work process, redistribution of the workload, and better data being made available for inter-rater reliability studies. Lastly, Secretary Peake reminded the committee of the three main groups of veterans the VA and the committee must take into consideration: (1) WWII and Korean veterans that face end of life issues and surviving spouse benefits; (2) Vietnam veterans who are now entitled to additional presumptive service connected benefits and are still the largest group connected to PTSD disabilities; and (3) Gulf War veterans who are in the prime of their lives and are seeking a transition back into the community and the workforce.

Admiral Dunne presented each committee member with their certificates.

General Scott opened the meeting up to general discussion.

Major Gade suggested that the committee receive a written mandate to follow. General Scott suggested the committee review the Duty section charter and present revisions to Admiral Dunne prior to the next meeting.

Lt. General Carney brought up the point Secretary Peake made about accomplishing something of merit within the first 100 days of the new administration. This point was reiterated by Admiral Dunne and Lt. General Carney added his thoughts that through his experience at the DoD, the first 100 days can be seen as a great window of opportunity to really get an established jump on some significant tasks. General Scott agreed.

The Committee recessed at 11:50 a.m. and General Scott reconvened the meeting at 1:15 p.m.

General Scott stated that the following reports/studies would be made available to the committee: VA's updated TBI regulations, Veterans Disability Benefits Commission (VDBC) Report, Institute of Medicine (IOM) PTSD studies, Center for Naval Analysis Corporation (CNAC) Report, EconSystems Report and a breakout of VA pending claims. General Scott also suggested briefing made to the committee should be scheduled for EconSystems, Senior Oversight Committee and Ms. Ruth Fanning, Director of Vocational Rehabilitation and Education Service.

The committee discussed and confirmed future one day meetings will be held monthly on Mondays and if two day meeting are needed, they will be scheduled for Monday – Tuesdays.

General Scott confirmed the committee will hire an Executive Director and a research assistant. If further expertise is needed, the committee will look into additional hiring should the need arise.

Upon suggestion from General Scott, Major Gade provided the committee with an overview of the Dole/Shalala findings. Major Gade informed the committee that the Dole/Shalala highlighted three distinct areas of need in connection to veterans and benefit payments: (1) loss of earnings; (2) quality of life; and (3) transition payments. Major Gade also explained some shortfalls of Dole/Shalala and provided insight as to why no solid legislation ever came about.

Upon suggestion from General Scott, Mr. Reese presented to the committee a brief overview of the Dole/Shalala finding from the point of view of a Veterans Service Organization (VSO). Mr. Reese highlighted the fact that the White House could not provide verification that those veterans under the new plan would receive the same benefits as veterans' under the old plan as the major objection.

Mr. Brad Mayes, Director, Compensation and Pension Service, presented an overview of the Disability Compensation Program. Mr. Mayes stated that the ultimate goal of the program is to meet the earnings gap between the veteran and the non-veteran. This is done by paying benefits to service members who suffered an injury and/or disease incurred during service. The basic claims process consists of establishing three criteria: (1) current evidence of a disability and/or disease; (2) evidence that said disability and/or disease occurred during service; and (3) a nexus connects the two. Mr. Mayes and the committee went into further discussion on how claims are received and promulgated, along with the statutes that underlie the structure for payments of benefits and the earning loss idea that is attached to the ratings schedule.

General Scott commented on Mr. Mayes' presentation and the committee's discussion saying the current VA rating schedule doesn't take into account some changes to medical technology, to the society and all that, and that's really what the committee needs to look at. The committee needs to look at trying to make the rating schedule more relevant to today's veterans and today's situation, not to necessarily try to get at the minor inconsistencies. Furthermore, General Scott suggested that the committee needs to focus on what are the disabilities, how are they defined, are they relevant, and what adjustments need to be made in that realm.

General Scott stated that he would get a copy of the IOM study on presumptive entitlements distributed to everyone. He also suggested to the committee on possible tasks would be to provide a recommendation to the Secretary of how long and what the methodology might be for updating the rating schedule.

General Scott called for a short break before the next briefing.

Mr. Mayes gave a short overview of the VA Rating Schedule. His presentation included a quick history of compensating veterans in the United States from Plymouth Colony through the Continental Congress, the Industrial Revolution, and both World Wars to present. Mr. Mayes reiterated to the committee that the most challenging aspect of the Rating Schedule is how VA can institutionalize the process of translating sound medical advice into a legal construct that provides a means for evaluating lost earnings and/or lost quality of life.

General Scott requested a copy of the 2005 Institute for Defense Analysis study and a briefing from the Office of Inspector General.

Brad Flohr, Assistant Director of Policy, gave a presentation of presumptive conditions as they relate to the VA and the Rating Schedule. Mr. Flohr gave examples of presumptive entitlement from pulmonary tuberculosis and neuropsychiatry disease, which were established in 1921 through Agent Orange use in Vietnam and up to current legislation and court decision currently pending. Mr. Flohr concluded his presentation by suggesting the committee members review an excellent report on the history of presumptions done a retired General Counsel member which is available on the VDBC Web Site.

General Scott listed the following studies as recommended reading for the committee: VA TBI regulation, VDBC report and executive summary, IOM report done for the VDBC, CNAC report done for the VDBC, breakout of claims backlog, IG report for the 2005 variance report, and additional reading to come.

The committee adjourned for the day at 5:00 p.m.

General Scott called the meeting to order at 8:05 a.m., October 31, 2008. General Scott welcomes the committee and turned the proceedings over the Ersie Farber, Designated Federal Officer.

Ms. Farber briefed the committee on administrative and organizational policy in regard to travel, expenses and other information as necessary.

General Scott petitioned the members of the committee for any recommendations in regard to the search for an Executive Director and two research assistants. General Scott stated that names can be passed on to either his self and/or Ms. Farber.

The committee decided that the next meeting would be Monday, December 8, with a following meeting to not occur until after the holiday season.

Mr. Epley led the committee in a discussion of the "Workload and Staffing Analysis" paperwork which provides a snapshot of VA claims backlog. The committee also discussed "benefit seeking" behaviors, its economic impacts and health care incentives.

Mr. Reese and Dr. Blanck suggested the committee receive a briefing from the VHA in regard to health care benefits and the categorization of such benefits.

The committee continued with further discussion of additional studies, reports and briefing to be held and/or read for the next scheduled meeting.

General Scott suggested a short break for 15 minutes, whereas the committee broke, and resumed.

General Scott listed the following studies: VA TBI regulations, VDBC report and executive summary, IOM reports done for the VDBC, CAN reports done for the VDBC, additional breakout of VA backlog claims and projections, IG's 2005 variance reports, and VHA categories of health care. For requested briefings, General Scott listed the following: Chairman of Veterans Board of Appeals, Senior Oversight Committee, Ruth Fanning from VR&E, General Counsel to speak about the VA appeals process, IG to speak on the aforementioned variance reports, Harry Walters, Majority and Minority Staff Directors from HVAC and SVAC, Mike Kussman, Under Secretary for VHA, Center for TBI, and the Center of Excellence for PTSD.

Dr. Burke requested a breakout of VA employees by regional office and HQ. He also inquired to the initial age of entry in the VBA system and VHA system.

Ms. Carroll suggested looking into the level of care and the cost of care provided to surviving family members and other veteran's beneficiaries.

Ms. Turner Lott requested a breakout of the VA budget.

General Scott wrapped up the meeting by saying he would extend an invitation to HVAC and SAV staffers for upcoming meeting and would be working on formalizing an agenda for the committee to follow.

Enclosed are summary notes from the Chairman.

General Scott adjourned the committee at 11:17 a.m.

Andrew Graf
Preparer of Minutes, Compensation and Pension Service

Ersie Farber
Committee Manager and Designated Federal Officer

General James Terry Scott, USA, (Ret.)
Chairman

Enclosure A: Summary Notes from General Scott

Memorandum

TO: Members, Advisory Committee on Disability Compensation

FROM: General James T. Scott, Chairman, Advisory Committee on Disability Compensation

As a result of the initial meeting on October 30 and 31, we discussed a number of subjects. This memorandum should not be construed as a verbatim record or a comprehensive list of the topics, but as a memory jog for future reference. More than one Committee Member cautioned us about expanding the scope of the Committee beyond the charter. We need to keep that caution in mind. However, many of the documents we ask for and testimonies we seek are necessary to understand the background of the major issues in the charter as outlined by Secretary Peake.

1. We decided that future meetings would be planned for Mondays (and Tuesdays when two day meetings are required).
2. We agreed to discuss the pros and cons of forming subcommittees to address the three major areas of interest (transition, quality of life, and the rating schedule).
3. We agreed to look for an executive director with recent, comprehensive VA experience who would be able to continue the research, compilation of data, and report preparation between meetings.
4. We agreed to ask VA for copies of the following documents for our review and discussion:
 - a. The new TBI regulation
 - b. The report of the Veterans Disability Benefits Commission (VDBC)
 - c. The institute of Medicine reports prepared for the VDBC
 - d. The Center for Naval Analysis Corporation reports prepared for the VDBC
 - e. A detailed breakout of the claims backlog
 - f. The report of the Dole/Shalala Commission
 - g. The VA IG report on variance in benefits (2005)
5. We agreed to ask for the following expert testimony:
 - a. A representative of the Senior Oversight Committee
 - b. A representative of the Veterans Board of Appeals
 - c. The Undersecretary of the VA for Health Affairs (or a representative) to discuss categories of VA health care and costs of VA health care
 - d. Ms Ruth Fanning from VA, VRE
 - e. An expert on the appeals process
 - f. Mr. Harry Walters to discuss the Futures Study he worked on
 - g. VA Committee members and staff from both Houses of Congress to discuss the intent of the law establishing this Committee
 - h. Ms Lori Salter from the Center for TBI and PTSD

6. The lists in paragraph 4 and 5 may not be all inclusive and modifications can be discussed at the December 8th meeting.
7. With the help of Admiral Dunne and Ms Farber, I will start on a draft agenda for December 8th.
8. Please feel free to comment on this memorandum or the proposed agenda. .