

DEPARTMENT OF VETERANS AFFAIRS
ADVISORY COMMITTEE ON DISABILITY COMPENSATION

Minutes of the February 2 and 3, 2009, Open Session Meetings

Members present:

James Terry Scott, LTG, USA (Ret.), Chairman
Charles Battaglia
Dr. Ronald Blanck, D.O. (February 2 only)
Dr. Robert Burke, Ph.D.
Thomas Carney, LTG, USA (Ret.)
Bonnie Carroll
Robert J. Epley
Deneise Turner Lott, J.D.

Members not present:

Dr. Richard Katz
Major Daniel Gade
Edward R. Reese, Jr.

VA Staff present:

Ersie Farber, Designated Federal Officer (DFO), VA, Compensation and Pension Service (C&P Service)
Jean York, C&P Service
Tom Kniffen, Chief, Legislative Affairs, VA, C&P Service (February 2 only)
Diana Williard, Program Analyst, Procedures & Program Development, C&P (February 2 only)
Robert Sanders, Program Analyst, Procedures & Program Development, C&P (February 3 only)
Alexander Wile, VA, Office of Policy and Planning (February 3 only)

Members of the public present:

Ray Wilburn, Economic Systems Inc
Mike Hayden, MOAA
Jim Wear, Veterans of Foreign Wars
John Vogel, Disabled American Veterans
Mike Turner, Wounded Warrior Project
Melissa King, L-3
Lexa Lemieux, Jefferson Consulting
Steve Smithson, American Legion
Ian DePlanque, American Legion
Richard Larson, Associated Veterans
Jackie Garrick, House Veterans' Affairs Committee
Ryan Lamke, Wounded Warrior Project
Victoria McLaughlin, McLaughlin Reporting (Court Reporter)

The sessions, which was open to the public, was held in the Carlton Ballroom of the St. Regis Hotel, 923 16th and K Streets, N.W., Washington, D.C., 20006. Subcommittee breakout sessions, held on Monday afternoon and Tuesday morning, were held in both the Carlton and the Chandelier Ballrooms.

Chairman Scott called the meeting to order at 8:35 a.m. on Monday. The January 2009 minutes were unanimously accepted without revision.

The entire Committee met on Monday morning in order to discuss the approach to be taken in the afternoon by the three subcommittees, Transition Benefits, Quality of Life (QOL), and Review of the Rating Schedule.

Regarding the Rating Schedule, the discussions would center on a process for updating the Rating Schedule regularly, a dedicated staff and cooperation between VHA and VBA. An ancillary question is whether the adjudication of complex medical issues ought to be centralized. Dr. Blanck questioned whether the rating schedule ought to be linked to a standardized coding system such as ICD-9.

Regarding QOL, the Committee discussed whether QOL loss should be an element of VA disability compensation and whether VA compensation explicitly or implicitly includes loss of QOL. Equally important would be how to measure QOL loss. LTG Carney noted three options: no change, adding a QOL measure to the rating schedule or amending special monthly compensation (SMC) to allow for QOL compensation. Dr. Burke noted that age, type of disability and timeframe are QOL considerations. Dr. Blanck added that disability improvement is also a factor. Mr. Epley opined that any compensation should be simple and straightforward, such as adding a set amount of compensation to a disability rating. He also stated that any SMC changes would require a legislative proposal.

Regarding Transition Benefits, General Scott noted that a preliminary question is whether all veterans or only those who are disabled should be targeted. A second question is how veterans are served by the existing system. The subcommittee will determine the role of an expanded Vocational Rehabilitation Service along with the role of the new GI Bill. Mr. Battaglia noted that not only disabled veterans but also their families needed help transitioning into civilian life. Mr. Epley pointed out that traumatic SGLI should be reviewed.

The three subcommittees are as follows: Transition Benefit Subcommittee, Charles Battaglia (Chairperson), Major Daniel Gade, and Bonnie Carroll; Rating Schedule Subcommittee, Robert Epley (Chairperson), Edward R. Reese, Jr., Dr. Ronald Blanck, and Dr. Richard T. Katz; and Quality of Life Subcommittee, Gen. Thomas Carney (Chairperson), Deneise Turner Lott, J.D., and Dr. Robert Burke.

The subcommittees met on Monday afternoon and Tuesday morning. When General Scott reconvened the entire Committee Tuesday afternoon, the subcommittees reported as follows. Mr. Battaglia, Chair of the Transition Benefits subcommittee, reported that in addition to Committee member Bonnie Carroll, Jim Wear, Rich Larson, Mike Turner (of the Wounded Warriors Project), Bob Sanders (VBA), Diana Williard (VBA), and Melissa King (LMT), were in attendance. He noted that although nothing was definitively decided, the subcommittee would like to see all veterans assisted in returning to civilian life. If that were not possible, then only disabled veterans should be assisted. This should include health care and family aid. The Transition Benefits subcommittee hopes to have a preliminary report by December of this year. Mr. Battaglia noted that he felt the Committee needed a staff to assist with the work. He also wanted to hear from panels of people such as: past and present VA executives, wounded warriors from OIF/OEF and the Gulf War, the Executive Directors (or others) from past study groups such as the VDBC, and a VSO panel.

LTG Carney, Chair of the QOL subcommittee, noted that he met with members Judge Lott and Dr. Burke, along with Ray Wilburn. He wanted to hear from a VA medical person regarding how VA defines QOL loss and whether VA felt QOL loss should be compensated, in particular when the disability is TBI or PTSD. The subcommittee was very interested in attending the VBA PTSD summit. LTG Carney would like to hear from a current VA special monthly compensation (SMC) expert, as well as from the TBI regulation authors. In addition, the subcommittee wanted more information on traumatic SGLI, which might be helpful when considering QOL loss.

Mr. Epley was the only member of the Rating Schedule subcommittee in attendance but he had spoken with his subcommittee members regarding their recommendations. Again, he recommended adopting the TBI methodology as a model to follow when reviewing the rating schedule. In addition, he recommended VBA have a dedicated staff to review and revise sections of the rating schedule on a regular basis – by body system or even by sections of body systems. Both VHA and private medical expertise should be used. To keep on schedule, the Director of the C&P Service would be invited to speak to the Committee regarding the progress of review and revision.

The statutory and regulatory provision regarding protection of service connection and of the evaluation of a disability was discussed. Mr. Epley noted that the applicable provisions regarding protection of service connection (absent a showing of fraud or that the service records show the veteran did not have the requisite service or character of discharge) after 10 years is 38 C.F.R. § 3.957. The provision regarding protection of the disability evaluation after twenty years (absent a showing of fraud) is section 3.951.

Chairman Scott summarized the findings of the Subcommittees and noted that the Committee wanted the following presenters at the next meeting: A current or

very recent RVSR or DRO to discuss a redacted rating decision and SMC, Dr. Dr. Carroll McBrine and the Chief of the Regulation Staff to discuss how the TBI regulations were drafted as well as Administrative Procedures Act (APA) procedures. In addition, the Regulation Staff Chief should be prepared to discuss adopting the TBI model and a schedule for rating schedule review and revision; a VBA and BVA staff member to discuss the VA appeals process from rating decision through BVA decision; and a VA QOL medical expert, if possible. In addition, the Committee would be interested in a Traumatic SGLI fact sheet if available. For future meetings, the other types of panels noted above would be helpful.

The General said that at the next meeting, March 9 and 10, the Committee would set milestones to cover the first twenty-four months of the Committee's formation. He also noted that the Committee was a standing Committee and that the members were, by statute, to be appointed for staggered four year terms. The General pointed out that a contract was being drafted by VA for a small staff who would support the Committee – either through a private agency or directly. He also hoped that the Secretary would appoint a few additional members (by statute, the Advisory Committee could have up to eighteen members) so that if some were unable to attend, they could still be productive. Prior to adjourning, the General stated that the next meetings would be March 9 and 10, April 6 and 7, and May 4 and 5, 2009, at the St. Regis Hotel.

The Chairman adjourned the meeting at 1:55 p.m.

Jean York
Preparer of Minutes, Compensation and Pension Service
Co-Committee Manager and Designated Federal Officer

Ersie Farber
Committee Manager and Designated Federal Officer

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