

DEPARTMENT OF VETERANS AFFAIRS
ADVISORY COMMITTEE ON DISABILITY COMPENSATION

Minutes of the March 9 and 10, 2009, Open Session Meetings

Members present:

James Terry Scott, LTG, USA (Ret.), Chairman
Charles Battaglia
Dr. Ronald Blanck, D.O.
Dr. Robert Burke, Ph.D.
Bonnie Carroll
Robert J. Epley
Deneise Turner Lott, J.D.
Dr. Richard Katz
Major Daniel Gade
Edward R. Reese, Jr.

Members not present:

Thomas Carney, LTG, USA (Ret.)

Staff present:

Ersie Farber, Designated Federal Officer (DFO), VA Compensation
and Pension Service (C&P)
Jean York, C&P
Tom Kniffen, C&P
Marcelle Habibion, Office of Policy and Planning (OPP)
Brian Stephens, C&P
Chima Ukachi, C&P
Atoy Spence, Baltimore RO
Dr. Caroll McBrine, C&P
Laura H. Eskenazi, Board of Veterans' Appeals (BVA)
Dr. Vicki Milton, C&P
Nancy Copeland, C&P
Keith Stabler, C&P

Members of the public present::

Ray Wilburn
Mike Hayden, Military Officers Association of American (MOAA)
Jim Wear, Veterans of Foreign Wars (VFW)
John Vogel, Disabled American Veterans (DAV)
Mike Turner, Wounded Warrior Project
Ryan Lamke, Wounded Warrior Project
Christine Hill, Wounded Warrior Project
Ian DePlanque, American Legion
Jerry Manar, VFW
David Armitage, USA POA

Noel S. Howard, M.D., Board of the Secretary of the Navy Council of Review Board, Disability Evaluation System (SECNAV CORB/DES)
Tom Tarantino, Iraq and Afghanistan Veterans of America (IAVA)
Christine Scott, Congressional Research Service (CRS)
Justin Constantine, Senate Veterans Affairs Committee (SVAC)
Denny Duffy, ACS
Dale Tidaback, Department of Defense (DoD)
Richard Murphy, VA-DoD Collaborative Service
Victoria McLaughlin, McLaughlin Reporting

Both sessions were open to the public and were held in the Carlton Ballroom of the St. Regis Hotel, 923 16th and K Streets, N.W., Washington, D.C., 20006.

The entire Committee met on Monday morning at 8:00 a.m. The minutes from the February meeting were accepted with the addition of references to the regulations that authorize protection of service connection after 10 years (i.e. 38 C.F.R. § 3.957) and of disability ratings after 20 years (i.e. section 3.951) suggested by Mr. Epley. Chairman Scott asked that all requests for information, data or meetings with VA or VA-related personnel be made through him and Ersie Farber (or Ersie's designee, Jean York). Mr. Battaglia mentioned that DoD Secretary Gates had recently met with VA Secretary Shinseki at VA and that the Secretaries were co-chairing the Senior Oversight Committee. Also, Mr. Battaglia noted that there were proposed bills in Congress that would increase Vocational Rehabilitation and Employment (VR&E) benefits by about \$1,200 monthly. He noted that the Committee would track any administrative or legislative changes made by either the Senior Advisory Council or Congress and might comment on and/or endorse any amendments.

Bonnie Carroll mentioned that she had been working on H.R. 1308, the Veterans Mental Health Screening and Assessment Act which would possibly have an impact on the screening for Traumatic Brain Injuries (TBI) and Post Traumatic Stress Disorder (PTSD).

Randy Reese said that there is a natural bridge between the VR&E program and the current Chapter 30 GI Bill, but not the new GI Bill, Chapter 33. He explained that VR&E veterans can use the same benefit package as that in Chapter 30, or the higher benefit package of the two. He stated that he thought the increase would be around \$1,900. Also, he noted that Senator Byrd had asked Veterans Service Organizations to present ideas on how to reduce the VBA claims backlog and promised, in response to a request from Chairman Scott, to share any such recommendations to the Committee. Mr. Reese passed out a White Paper entitled *Transforming the VA Claims Process*, which the Chairman said would be discussed at the next meeting.

The following three formal presentations were given on Monday: Dr. Carol McBrine and Tom Kniffen, Chief of the C&P Regulations Staff, gave an overview

of the TBI regulatory drafting model and suggested models for future revisions of the rating schedule. Dr. McBrine noted that the expedited TBI regulations took about 19 months to publish in final. She explained that for future revisions, it is imperative that there be more VHA involvement (in particular, VHA physicians who are subject matter experts). She also stated that a single outreach conference – with participation from public and private experts and the general public – before publication of a whole body system would be helpful as well as publishing advance notice of proposed rulemaking. One of the primary reasons for revising the rating schedule is to remove ambiguities and subjective criteria. Dr. McBrine referenced the IOM report entitled *A 21st Century System for Evaluating Veterans for Disability Benefits* as well as the report of the Veterans Disability Benefits Commission regarding horizontal and vertical equity and the rating schedule. Dr. McBrine pointed out that proposed regulations for the neurology and digestive systems have been written and are under review within VA; only the musculoskeletal system regulations have yet to be written.

Tom Kniffen described scheduling of rating schedule revisions and outlined a plan to have a VBA staff committed to revising the rating schedule with possibly some help from a private contractor such as CNA. He talked about requesting a detail of VHA doctors to the regulations staff.

Chairman Scott reflected that revision of the rating schedule is at the core of the Committee's charter. In response to Dr. Katz's question regarding adopting the AMA Guides in lieu of the rating schedule, Dr. McBrine and Mr. Epley said that on page 270 of the above referenced IOM report it was noted that "the sixth edition is expected to improve the evidence base for impairment evaluation and include more assessment of ADLs, but it still will not be intended for use as a tool for evaluating ability to work". Regarding separating the criteria for PTSD, Dr. McBrine noted that this would make rating more complicated because under the current criteria, there is no need to separate differential diagnoses.

Brian Stephens, Acting Assistant Director of C&P Service's Business Management Staff, gave an informative presentation on the status of information technology within VBA along with a hands-on demonstration of RBA-2000, which is used for composing rating decisions at all regional offices. Continuing the TBI theme, Mr. Stephens showed the group how a TBI rating would be composed. The Committee had many questions regarding how IT could help RVSRs process claims more accurately and efficiently. Mr. Stephens briefed the Committee on the status of Virtual VA, VA's e-File system, the cornerstone of paperless claims processing. Mr. Stephens explained that every Benefits Delivery at Discharge (BDD) claim is processed in a paperless manner at either Winston-Salem or Salt Lake City. This two-station paperless processing began in August of 2008. The VA system is expected to be entirely paperless by the year 2012. Chairman Scott noted and Mr. Stephens agreed that it would greatly assist VA if service medical records were electronic.

Mr. Stephens pointed out that it would be helpful to rating veterans service representatives if it were required that VHA medical examiners use the examination templates provided to them by VBA. Currently, only about one-third of all examiners use the VBA worksheets. Mr. Stephens noted, as Dr. McBrine had, that objective rating criteria makes decision making simpler and more consistent from office to office.

Ms. Atoy Spence, a Decision Review Officer (DRO) from the Baltimore Regional Offices gave an overview of the VA appeals process, with emphasis on the DRO process which included timeframes at each stage. Again, the Committee had many questions for Ms. Spence on the appeals process and the jurisdiction of Decision Review Officers. She noted that new evidence and a different interpretation of the law are the primary reasons a DRO overturns rating decisions. Ms. Spence explained that at the Baltimore Regional Office, a DRO reviews each claim prior to transfer to the Board of Veterans Appeals.

Ms. Laura Eskenazi, Chief Counsel for Operations, Board of Veterans Appeals, explained about the BVA appeals process and talked briefly about processing a paperless appeal. She noted that approximately ten percent of cases are appeals from the BVA to the Court. Also, the remand rate was 57 percent in 2004 but had gone down to 36 percent in 2008. Also, she explained that the BVA was encouraging its Veterans Law Judges to shorten (make clearer and more precise) BVA decisions.

The first presentation on Tuesday morning was on Special Monthly Compensation (SMC) by Keith Stabler, Chief of the Advisory and Judicial Review Staff. Mr. Stabler had been an RVSR for many years until the summer of 2008 when he transferred to Central Office. He explained how SMC is applied to specific disabilities. The Committee was interested in exploring whether SMC could be (or was in fact already) applied to compensate for quality of life loss.

The three subcommittees – Rating Schedule Review, Quality of Life, and Transition Benefits – met in breakout sessions Tuesday morning. Following that, each Subcommittee Chairperson (Judge Lott chaired in LTG Carney's absence) reported on their progress.

On Tuesday afternoon, Chairman Scott briefed the Committee on his meeting with Under Secretary for Benefits (USB) Dunne and C&P Service Director Brad Mayes. The USB told the Chairman that, due to its Congressional mandate and his and the Secretary's interest in the Committee's Charter, the Committee would continue to meet monthly. Regarding any needed analysis or research, the USB asked that the Committee pose any requests through the Designated Federal Officer to VBA for response. The USB explained that his preference was to handle research or analysis internally. If needed, outside help might be available in the future. The Chairman asked the Committee members to send him, via

email, any requests for information or research, and he would in turn pass the request on to VBA.

Late Tuesday morning and early Tuesday afternoon, the Committee broke into the three subcommittees: The Transition Benefit Subcommittee, consisting of Charles Battaglia (Chairperson), Major Daniel Gade, and Bonnie Carroll; the Rating Schedule Subcommittee, Robert Epley (Chairperson), Edward R. Reese, Jr., Dr. Ronald Blanck, and Dr. Richard T. Katz; and the Quality of Life Subcommittee, consisting of Dr. Robert Burke and Deneise Turner Lott, J.D., who chaired in LTG Carney's absence.

Mr. Epley reported that the Rating Schedule Subcommittee set up the following goals: First, to develop an approach for recurring, regular review and updates to the VA schedule for rating disabilities (VASRD), with time estimates for each body system or section, guidance/methodologies for review and expected results, resources needed (including staffing) and oversight of the VASRD review process. He noted that the mental, neurological, respiratory, cardiovascular and musculoskeletal systems ought to be the first five body systems reviewed. Mr. Epley also suggested proposing language to revise 38 U.S.C. § 1155 to include these four domains of impairment: pathology impairment, functional limitation, and work-related and non-work related disability. He handed out a suggested revision to section 1155 and the Chairman asked each Committee member to read it before the next meeting.

Mr. Battaglia, chair of the Transition Benefits Subcommittee, stated that his committee would provide recommendations on areas such as VR&E, family caregivers, and would make various legislative and administrative proposals. He noted that the Committee should hear from the VR&E Task Force of 2004, which had come up with approximately 100 recommendations, most of which had been implemented. He also felt that the Committee should hear from GAO regarding a January 2009 audit of VR&E functions. Mr. Battaglia also wanted to shorten the timeframe that veterans have to wait to get their first checks.

Judge Lott reported that the Quality of Life Subcommittee had two recommended models. The first recommendation was that there would be a third tier of compensation above rating and SMC. The second recommendation was to add a QOL payment to the SMCs. She also asked for much information and statistics from VA regarding the number of veterans in receipt of individual unemployability, the number of veterans who are service connected for TBI and PTSD and whose combined evaluation is 80% or above.

The Chairman asked each Subcommittee chair to prepare a synopsis and send it around to the rest of the Committee before the April meeting. Before adjourning the session, Chairman Scott reminded the Committee members that the next two-day meeting would be April 6 and 7, 2009. The first half of the first day would be presentations and full Committee discussion. There will be

Subcommittee breakouts Monday afternoon and Tuesday morning. On Tuesday afternoon, each Subcommittee should be prepared to have a presentation further refining their approach to their topic. From that the Chairman and committee will compose a document that describes its approach to the work outlined in its charter along with a time line and schedule. This document will be passed on to the Secretary.

The Chairman adjourned the meeting at 2:40 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