

Lieutenant General James Terry Scott (Retired), Chairman, Veterans' Disability Benefits Commission

Statement of James Terry Scott, LTG, USA (Ret)  
Before the Senate Veterans' Affairs Committee  
Hearing on the Findings and Recommendations of the  
Veterans' Disability Benefits Commission  
January 24, 2008

Chairman Akaka, Ranking Minority Member Burr, Members of the Committee, I am pleased to appear before you today to discuss the findings, conclusions, and recommendations of the Veterans' Disability Benefits Commission. First, I would like everyone to understand that my statements today are my own and do not necessarily represent the views of the Commission. The Commission completed its work and submitted its report on October 3, 2007.

The Commission was created by Public Law 108-136 to study the benefits and services that are provided to compensate and assist veterans and their survivors for disabilities and deaths attributable to military service. Specifically, the Commission was tasked to examine and make recommendations concerning:

- The appropriateness of such benefits;
- The appropriateness of the level of such benefits; and
- The appropriate standards for determining whether a disability or death of a veteran should be compensated.

Commissioners were appointed by the President and the four leaders of Congress.

For almost two and one half years, the Commission conducted an extensive and comprehensive examination of issues relating to veterans' disability benefits. This is the first time that the subject has been studied in depth by an outside entity since the Bradley Commission in 1956. We identified 31 issues for study. We made every effort to ensure that our analysis was evidence based and data driven, and we engaged two well-known organizations to provide medical expertise and analysis:

- the Institute of Medicine (IOM) of the National Academies, and
- the CNA Corporation (CNAC).

We examined many issues with added emphasis on:

- The impact of disability on Quality of Life
- The VA Rating Schedule
- Posttraumatic Stress Disorder (PTSD)
- Individual Unemployability
- Presumptions
- Transition
- Concurrent Receipt
- Compatible Electronic Information Systems
- Claims Processing

I will address our key conclusions and recommendations on each of those topics.

We offered 113 recommendations covering a wide spectrum of veterans' disability benefits issues to ensure that the benefits fairly and uniformly compensate all service-disabled veterans and their

families. The Commission's recommendations are included in Chapter 11 of our report. Enclosed with this statement, for the record, is the list presented in Chapter 11 that identifies who we thought could take action on each recommendation.

Some recommendations are inexpensive. Some are not. Some can be adopted by VA and/or DoD. Other recommendations involve DOL and SSA. Others will require legislation. The Commission understands that not all recommendations can be adopted immediately. We have identified 14 recommendations that, in our judgment, are higher priority. We hope the Congress and the Departments will carefully consider all recommendations.

To summarize our findings:

VA compensation currently paid to disabled veterans is generally adequate to offset average impairment of earnings. A comparison with the earnings of veterans who are not service disabled demonstrated that disability causes lower earnings and employment at all levels of severity and types of disabilities. The amount of compensation is generally sufficient to offset loss of earnings except for three groups of veterans:

- those whose primary disability is PTSD or other mental disorders,
- those who are severely disabled at a young age, and
- those who are granted maximum benefits because their disabilities make them unemployable.

We found that some of the special monthly compensation payments, and ancillary, and special benefits have not been adjusted over the years to reflect cost of living changes and to ensure that payments are adequate. We recommended that these be updated and reviewed.

The Commission particularly focused on the issues concerning care for the severely injured such as amputees and those with traumatic brain injury or TBI. Due to improvements in the armor our Services provide and the advances in military medicine, service members are surviving from wounds that, in the past,

they died from. In many ways, we have not demonstrated that we are prepared to provide adequate care and support for these veterans.

We received moving testimony concerning the experience of amputees and other severely disabled veterans undergoing treatment, multiple fittings, and lengthy training to use prostheses and we recommend that those with severe disabilities be provided a pre-stabilization allowance of up to 50 percent of compensation for up to five years.

The families of the severely injured are assisting in the care and rehabilitation of these wounded warriors. Some are sacrificing jobs, careers, homes, and health insurance, and facing a tremendous impact on their own health in order to support their injured family members.

Congress should provide health care and a caregiver allowance for these families.

Impact of Disability on Quality of Life

- We believe the level of compensation should be based on the severity of disability and should make up for average impairment of earnings capacity and the impact of disability on functionality and quality of life. It should not be based on whether the disability occurred during combat or combat training, or the geographic location of injury, or whether the disability occurred during wartime or a time of peace.
- Current compensation payments do not provide payment above that required to offset earnings loss. Therefore, there is currently no compensation for the impact of disability on quality of life for most veterans.

- While permanent quality of life measures are developed and implemented, current compensation payments should be increased up to 25 percent with priority to the more seriously disabled.

#### The VA Rating Schedule

- The Commission concluded that the current VA Schedule for Rating Disabilities which is used to evaluate veterans' severity of disability has not been adequately revised. IOM found that 47 percent of codes have been revised since 1990 but 35 percent have not been revised since 1945. We recommend that the Rating Schedule be updated as soon as possible but certainly within the next five years.
- As a matter of priority, this update must include specific criteria for the evaluation and rating of traumatic brain injury (TBI) and all mental disorders, especially posttraumatic stress disorder (PTSD). As it is revised, the schedule should include new diagnostic classifications, up-to-date medical criteria, and reflect medical advances.
- In addition, the VA should create a process for keeping the Rating Schedule up to date, including publishing a timetable, and creating an advisory committee for revising the medical criteria for each body system.

#### PTSD

- We found that there is insufficient monitoring and coordination between VBA and VHA for veterans experiencing PTSD. An October 2007 IOM report on PTSD treatment (not reflected in our report) found that there is not even an agreed-upon definition of recovery and that there is not sufficient evidence of the efficacy of treatment modalities and pharmaceuticals.
- Although there has been a lot of discussion about the extent that OEF and OIF service members experience PTSD, we noted that only some 1,400 service members had been found unfit for duty due to PTSD out of some 83,000 over the past seven years. This does not indicate that sufficient attention is being paid to this disorder.
- The Commission believes that a holistic approach to PTSD should be established that couples compensation, treatment, and vocational assessment. We also believe that re-evaluation should occur every two to three years to gauge treatment effectiveness and encourage wellness.

#### Individual Unemployability (IU)

- Veterans with service-connected disabilities rated 60 percent or more but less than 100 percent and who are unable to work due to their disabilities can be granted what is known as IU and be paid at the 100 percent rate. The number of such veterans has increased by 90 percent over the past few years causing considerable attention. We found that the increase is largely explained by the aging of the cohort of Vietnam veterans.
- As the Rating Schedule is revised, specific focus should be given to the criteria for PTSD and other mental disorders so that IU does not need to be awarded so frequently. Currently, 31 percent of veterans with a primary disability of PTSD are awarded IU. Since incapacity to work is part of the criteria for a rating of 100 percent for PTSD and other mental disorders, it is not clear why many of these veterans are not rated 100 percent instead of IU.

#### Presumptions

- When there is evidence that a condition is experienced by a sufficient cohort of veterans, a "presumption" can be established so that it is presumed to be the result of military

service. This has been done for radiation exposure, Agent Orange defoliant in Vietnam, and other conditions. The Commission asked the IOM to review the existing processes for making these decisions and IOM recommended a detailed, comprehensive, and transparent framework based more on scientific principles. Our Commission believes that this framework will improve the process but expresses concern over the causal effect standard that would be included instead of the existing standard for an association.

#### Transition

- The Commission recommends a realignment of the DoD disability evaluation process used to separate or retire service members who are not fit for military duty. The Military Services (Army, Navy, and Air Force) should determine whether a service member is fit for duty and VA should determine the level of disability of service members who are found unfit for duty. This will ensure equitable and consistent ratings.
- We also believe that DoD should mandate that separation examinations be performed on all service members to ensure that all known conditions at the time of discharge are documented.

#### Concurrent Receipt

- Regarding concurrent receipt of military retirement and VA disability payments, the Commission found these to be two different programs with entirely different missions. DoD retirement recognizes years of service and VA disability payments compensate for impairment in earnings and should compensate for impact on quality of life.
- Over time, Congress should eliminate the ban on concurrent receipt for all military retirees and for all service members who are separated from the military due to service-connected disabilities. Priority should be given to veterans who separate or retire with less than 20 years of service and a service-connected disability rating greater than 50 percent or disability as a result of combat.
- Payment offset should also be eliminated for survivors of those who die in service or retirees who die of service-related causes so that the survivors can receive both VA Dependency and Indemnity Compensation and DoD Survivors Benefit Plan.

#### Compatible Electronic Information Systems

- VA and DoD should expedite their efforts to implement compatible electronic information systems. We believe this is one of the most important actions that can be taken. Not only will this improve claims processing but it will enhance the ability to share medical records and avoid some of the unfortunate cases that "slip through the cracks" during the transition from VA to DoD.
- On this note, the Commission encourages VA and DoD to work together more often. Joint ventures, sharing agreements, and integration should be the norm, not the exception.

#### Claims Processing

- The Commission studied the existing claims processing for disabled veterans and was disappointed by the burdensome bureaucracy and delays that our veterans face. Therefore, we recommend that VA establish a simplified and expedited process using best practices and maximum use of information technology to improve the claims cycle.

#### The Dole/Shalala Commission and the Administration's Proposed Legislation

Our Commission generally agrees with the advice presented by the Dole/Shalala Commission, but we differ with two of their suggestions. We believe that all disabilities and injuries should be compensated based on severity of disability and not be limited to combat or combat-related injuries. From 1932 to 1972, compensation was paid at lower rates for peacetime vs. wartime

injuries. In 1965, VA concluded that it could not justify paying different rates. We think the same principle applies to trying to distinguish between combat-related injuries and others. Regardless of how combat or combat-related activities are defined, deciding each case would require judgment and subjectivity on the part of VA rating officials and introduce a new level of complexity to what everyone agrees is already an overly complex process. The current policy requires a court martial determination of misconduct to make someone ineligible and we think that is the proper level of decision.

Nor does our Commission believe that VA disability compensation should end and be replaced with Social Security at retirement age. For the severely disabled, that would result in a reduction in income of somewhere in the neighborhood of 40 percent at a time when their failing health will likely require them to hire people to do normal things that they were able to do when younger.

Our Commission's recommendations are in many ways similar to the intent of the Administration's proposed legislation but we recommended stronger support for the families of those severely disabled and we would not restrict benefits such as family health care to those with serious injuries experienced in combat or combat-related circumstances. There is currently no commonly accepted or used definition for serious injuries but I feel that the definition proposed in the Administration's proposal is too stringent. It is not clear to me that all veterans currently rated 100 percent would meet that proposed definition. In our review of those discharged as unfit from 2000 through 2006, only about 1,500 of 83,000 were rated by DoD as 100 percent disabled and only 5,000 were rated as 50 percent or higher. We believe as a matter of principle that benefits should be based on the severity of disability, not on when or how the disability occurred.

I believe that I can speak for the entire Commission and recommend that all veterans should be provided benefits and services consistent with their disabilities. All should be evaluated and compensated using the same criteria and not establish a different system for veterans of the current conflict and those of the future while using a separate system for veterans of previous eras.

I reviewed the provisions of the National Defense Authorization Act for 2009 and noted that it does not limit the process to combat or combat-related disabilities and defines serious disabilities as those injuries that may make a service member unfit for duty. I am personally very glad to see this.

In Conclusion:

- The Commission believes that if our recommendations are implemented, a system for future generations of disabled veterans and their families will be established that will ensure seamless transition and improve their quality of life. It is our hope that the President, Congress, VA, and DoD take this opportunity to create a veterans disability benefits system that will adapt as the needs of future veterans change.
- I speak on behalf of all of the commissioners when I say it has been an honor and a privilege to serve our current and future veterans through this effort. During the course of our work, we felt the weight of our responsibility and I believe each one of us worked a little harder to ensure we made a difference.
- Each member should be thanked for their hard work, dedication, and professionalism. This was not an easy assignment-their commitment and resolve was true to the end.

And now I would be glad to take questions.