

## Interim Committee Staff Report: Investigation of Joint Disability Evaluation System

### INTERIM COMMITTEE STAFF REPORT INVESTIGATION OF JOINT DISABILITY EVALUATION SYSTEM SENATE COMMITTEE ON VETERANS' AFFAIRS May 21, 2012

During the past two months, Committee staff has reviewed 121 claims from 23 different Integrated Disability Evaluation System (IDES) sites involving mental health diagnoses in general and Post-Traumatic Stress Disorder (PTSD) diagnoses in particular. Preliminary results from this investigation have indicated the following:

#### 1. Some Inconsistency Identified Between Military and VA Decisions

Evaluations were inconsistent in about 34% of the claims reviewed. In some cases, the data available in an electronic format was insufficient to assess consistency.<sup>1</sup>

#### 2. Inconsistencies in Diagnosis by Military and VA Examiners and Treating Providers

The frequency and severity of inconsistencies between military mental health providers, military disability evaluators, and VA was less frequent at locations other than the Forensic Psychiatry Reviews at Madigan. However, evaluations at some other military sites focused on perceived "malingering" (which requires intent to deceive) or exaggeration of symptoms without documentation by appropriate standardized interview techniques and recommended psychometric tests.

- For example, providers at Fort Bragg found malingering, lack of cooperation and exaggeration of symptoms without evidence of a structured interview and multiple psychometric measures. Some clinicians focused on tests for malingering without other diagnostic tests for PTSD. When the same servicemembers were examined by other clinicians, they were diagnosed with compensable mental health disabilities, documented by multiple psychometric tests including those that assess for false responses.

- In some locations servicemembers were found fit for duty with mental health conditions rated at 50% or higher by VA rating decisions.

#### 3. Military Providers Did Not Always Use Structured Interview Techniques or Appropriate Testing

Military medical providers did not regularly use widely accepted best practices, such as the Clinician Administered PTSD Scale or CAPS which is considered the "gold standard" in PTSD assessment, for structured interviews or a multi-faceted testing protocol in their diagnosis and assessment of PTSD.<sup>2</sup>

#### 4. DoD is Not Recognizing Chronic Adjustment Disorder as a Disability

Servicemembers diagnosed with a chronic adjustment disorder due to stressors in military service are not considered disabled by the military services, but are recognized by VA and the Diagnostic and Statistical Manual for Mental Disorders, Fourth Edition, Text Revision (DSM-IV-TR) as disabling conditions.<sup>3</sup> The refusal of DoD to recognize the stress-related condition of chronic adjustment disorder as an unfitting disability has resulted in the denial of disability retired pay to servicemembers whose persistent symptoms due to a combat-related stressor do not meet the full criteria for PTSD.

In some of the cases reviewed, an initial diagnosis of adjustment disorder was subsequently found at discharge or after review of the Madigan Forensic Psychiatry opinions to meet all of the relevant criteria for PTSD due to combat or military sexual trauma.

The DoD policy concerning chronic adjustment disorders is inconsistent with the criteria in the DSM-IV-TR and the VA rating schedule which requires service-connection of chronic adjustment disorder incurred in or aggravated by military service.<sup>4</sup>

#### 5. Incorrect Application of VA Regulation May Lead to More Soldiers on Temporary Disability Retirement List

Servicemembers who are being considered for medical separation due to behavioral health disorders not related to stress may be processed by the military services and VA rating decisions under the criteria of a VA Regulation (38 C.F.R. section 4.129) that applies only to mental health disorders resulting from a highly stressful event. This incorrect interpretation and application may lead some servicemembers, who are otherwise qualified for Permanent Disability Retirement, to be placed on the Temporary Disability Retirement List (TDRL) and be subjected to additional examinations and reviews.<sup>5</sup> This results in an increased workload for an already stretched group of behavioral health providers. VA identified one regional office which had erroneously applied section 4.129 to any mental health condition. VA provided training on the correct application of section 4.129 to that office. Medical Evaluation Board (MEB) physicians indicated a belief that the Army required the application of section 4.129 to all behavioral health unfitting mental health conditions, although Army command reports that this is not the policy. It appears that both VA and the military services need clearer instructions on the applicability of section 4.129.

#### 6. Errors Were Identified in VA Rating Decisions

Approximately 45% of 24 rating decisions reviewed at a military Physical Evaluation Board (PEB) site contained errors. Some of these errors adversely affected the benefits awarded by the military and by VA to separating servicemembers. Others were likely to lead to appeals because of erroneous notices, but may not necessarily change the result of the claim. VA Regional Offices were notified of such errors and indications of potential errors.

Examples of errors identified during the review of claims include:

- A servicemember with a lung condition who was being treated with steroids and immunosuppressive drugs was incorrectly rated at 0% rather than 100%.
- A servicemember who had multiple hospitalizations for psychotic episodes within his last year of service was erroneously rated at 50% when his condition warranted a higher evaluation.
- A servicemember who suffered a blast injury and who had frequent post-traumatic headaches with photophobia was incorrectly denied service-connection for headaches related to a Traumatic Brain Injury (TBI).
- Other servicemembers were erroneously rated at 0% for conditions the military found unfitting.

#### 7. Some VA Medical Examinations Failed to Evaluate TBI Residuals

Some VA medical examinations involving TBI failed to address findings on detailed neuropsychological testing conducted during service. TBI facets such as memory are reported as "normal" based on "general conversation" without repeating or referencing prior tests, which identified the type and severity of the servicemember's TBI deficits. In a number of cases, TBI and PTSD conditions were rated together when the evidence suggested that some of the TBI conditions should have been considered separately. For example:

- Testing that would help to differentiate between TBI and mental health conditions was not conducted despite indications of deficits, such as visual-

spatial orientation and memory loss due to organic injuries (such as trauma to a specific part of the brain associated with certain deficits).

- VA claims for TBI residuals were denied or received a lower rating based on the absence of objective testing. If testing had been conducted, objective evidence of TBI for symptoms complained of by the servicemember, might have changed the result.
- Conclusions by VA examiners were inconsistent with the medical evidence, such as an examination for TBI which found no TBI to support a diagnosis of post-traumatic headaches, but indicated that the same veteran's dizziness following an IED blast injury was due to his TBI.
- A servicemember diagnosed with anxiety disorder prior to separation was erroneously denied service-connection for PTSD when the disability had been diagnosed as anxiety disorder due to combat.

#### 8. Military Services Failed to Consider the Combined Effect of Related Disabilities

In some cases, the military service did not consider the combined effect of closely related disabilities in determining fitness. For example, a servicemember was found unfit due to a

musculoskeletal condition of the lower back but was found fit for the related radiculopathy related to the same disability.

#### 9. Errors Were Identified in VA Rating of Conditions Not Unfit for Military Service

Ratings provided by VA contained a number of errors which were not considered unfitting by the PEB, but which adversely impacted the rating provided by VA. For example:

- A servicemember who had documented nerve injuries due to a combat wound was not rated for the disability by VA.
- A servicemember who was diagnosed with Gastroesophageal Reflux Disease (GERD) on the VA examination was denied benefits due to "no diagnosis".
- A servicemembers who had claimed a condition not considered unfitting by the military service did not have the condition evaluated in the rating decision for VA benefits.