

The Honorable JAMES P. TERRY, CHAIRMAN, BOARD OF VETERANS' APPEALS

STATEMENT OF JAMES P. TERRY,  
CHAIRMAN, BOARD OF VETERANS' APPEALS

BEFORE THE

COMMITTEE ON VETERANS' AFFAIRS  
UNITED STATES SENATE

February 11, 2009

Good morning, Mr. Chairman. It is a pleasure to be here today on behalf of the Board of Veterans' Appeals (BVA or Board) to provide information to you and the members of the Committee on the important issues outlined in your letter of invitation. Those three major issues include (1) how best to mitigate the delay in processing appeals, (2) what legislative or policy recommendations concerning the processing of appeals we can share with the Committee, and (3) how we would describe the relationship of the Board with the U.S. Court of Appeals for Veterans Claims (CAVC or Court).

Turning to the first area, we attempt to mitigate the delay in processing appeals through several targeted approaches - staffing, training, performance goals, and communication. Key to meeting our staffing needs has been the critical assistance provided by Congress and the administration in providing additional funding for staff hiring over the past three years, which has greatly enhanced the Board's productivity. This has not only enabled the growth of our attorney staff, but has led to a commensurate increase in the professionalism of our administrative staff. In order to help new staff achieve their full potential, the Board has a comprehensive training program. Each new attorney is mentored by one of the Board's many experienced attorneys, and substantive legal, medical, and decision-writing training is provided for all attorneys in critical areas related to appeals adjudication. Along with training, the Board's performance goals further enhance our efficiency in decisionmaking. Each of our Veterans Law Judges and attorneys is expected to meet specific minimum standards of productivity and quality each year, and many usually far exceed these goals.

The Board continues to experience improved productivity by our attorneys and judges, and we expect to issue more than the 43,757 decisions we issued last year, which was more than 3,000 beyond the number of cases received. We take advantage of every communication opportunity to reach out to those who share our responsibility to deliver speedy and accurate appellate decisions to the veteran community. We have worked with your staff to clarify through legislation, such as that passed last October, the best approach to notifying veterans of the information and evidence that is expected of them to help substantiate their claims. We are working with the regional offices through our travel board trips and videoconferencing to assist in the training of rating specialists and Decision Review Officers. We have regular meetings with other VA staff for purposes of sharing ideas on how to mitigate delays in the processing of claims and appeals.

The Board has fully supported VA's goal of increasing the use of paperless claims and appeals processing, and in Fiscal Year 2008 completed its first paperless appeal. As VA expands the

paperless processing of Benefit Delivery at Discharge (BDD) claims, the Board is actively preparing to provide timely review of these claims if they mature into appeals. We are planning to train additional judges and attorneys to handle paperless appeals.

In considering legislative and policy recommendations, we must remember that the system of adjudicating claims and appeals is designed to give the benefit of the doubt to all veterans. This means that times allocated for submission of documents and moving to the next step in the claims and appeals process are elongated for the benefit of the veteran.

As a consequence of recent changes in the law that provide for increased opportunities for attorney representation at the regional office level, the time may be right for shortening certain statutory and regulatory response periods for purposes of expediting the processing of claims and appeals without taking away rights or protections from veterans. This is at the heart of the Expedited Claims Adjudication Initiative, which I will address in a moment.

Another change the Committee may want to consider is allowing the Board to determine whether a video-conference hearing vice an in-person Travel Board hearing could expedite resolution of veterans' appeals in appropriate circumstances. The success rate of appeals for veterans who choose video conference hearings is exactly the same as those who choose an in-person hearing before the Board. Changing the law to allow the Board to offer veterans the option of video-conference hearings would greatly enhance the use of the Board's resources and expedite the processing of appeals without affecting veterans' rights. More importantly, this change would benefit veterans who live in areas of the country where the volume of hearing requests does not warrant Board travel to a regional office to conduct hearings more than once or twice a year by enabling them to receive much more timely hearings. For the Board, not only could travel expenses be reduced, but decreasing the time Veterans Law Judges spend on travel boards would also yield additional time to devote to deciding other appeals.

In responding to your query concerning the relationship between the Board and the CAVC, a discussion of the volume of cases before each body is instructive. For example, the Board received more than 39,000 cases in 2008 and decided 43,757, making a significant dent in its backlog. The Court received 4,128 new cases in 2008, and decided 4,446, again making a significant impact on its backlog. Like the Department, the Court has been aided by the Committee's support for additional resources.

The Board is obligated to provide reasons or bases in support of all material findings of fact and conclusions in its decisions. (38 U.S.C. § 7104(d)) The Court is not permitted to substitute its judgment for that of the Board, even if the Court might not have reached the same factual determinations, if there is a "plausible" basis in the record for the Board to make such determinations. This deferential standard of review ensures that the Board's responsibility for evaluating the credibility, weight, and probative value of evidence necessary to make the highly technical factual determinations required in adjudicating complex medical compensation cases is not changed. Under no circumstances should it be switched from the statutorily appointed fact finder to an appellate court one step removed from the fact-finding process. When this standard of review is not properly applied, cases may be unnecessarily remanded for further amplification of the reasons and bases in support of the same decision previously reached.

Finally, I would like to update you on the Expedited Claims Adjudication Initiative (ECA). This initiative, published as a final rule in the Federal Register in November 2008, is a two-year pilot program that is scheduled to begin on February 2, 2009. The program offers accelerated claims and appeals processing for eligible claimants at four select VA Regional Offices: Nashville, Seattle, Lincoln, and Philadelphia. The goal of the initiative is to determine whether VA can expedite the claims and appeals process by obtaining waivers from claimants and their representatives of the generally unused portions of certain statutory and regulatory response periods, and by pre-screening cases at the Board to determine the adequacy of the record for appellate review.

Participation in this initiative will be strictly voluntary, and open to claimants in the jurisdictions of the four trial sites who are represented by a recognized Veterans Service Organization, attorney or agent at the time of electing to participate in the initiative. A claimant's decision to participate in the ECA can be withdrawn at any time, with no penalty, and if a claimant decides to withdraw the case will continue to be processed by the RO under normal procedures. We believe the ECA will serve as an excellent model for a system-wide expedited claims adjudication system after the trial period has concluded.

Thank you for listening this morning and I would be happy to answer any questions that you, Mr. Chairman, or the members, may have.