

The Honorable James P. Terry, Chairman, Board of Veterans' Appeals; Accompanied by: Mr. Ron Garvin, Vice Chairman, Board of Veterans' Appeals; Mr. Steve Keller, Senior Deputy Vice Chairman, Board of Veteran's Appeals

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

BEFORE THE

COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES SENATE

March 7, 2007

Good morning, Mr. Chairman. It is a pleasure to be here today to discuss with you, the members of the Committee, and your staff, the Board of Veterans' Appeals' (Board's) role in the VA benefits claims system. I will address Board productivity, the accuracy of our decisions, current issues affecting the Board, and a review of those actions we are taking to improve the claims adjudication and appeals process.

The Board's mission, as set forth in Chapter 71 of Title 38, United States Code, is essentially unchanged since its establishment in 1933 ?to conduct hearings and consider and dispose of appeals properly before the Board in a timely manner.? The Board renders final decisions on behalf of the Secretary on all appeals of adverse decisions issued under a law that affects the provision of VA benefits. These appeals most commonly arise from decisions of VA regional offices, but also include those arising from decisions by VA medical centers. Although the Board is an appellate body, it has fact-finding authority and provides a fresh look at the law and evidence in each case it considers. In addition to ruling on the merits of a claim, the Board may direct further development of the evidence and readjudication of the claims at issue by the agency of original jurisdiction (AOJ) if it is necessary to fairly consider the appeal.

The Board has jurisdiction over a wide variety of issues and matters, but the vast majority of appeals involve claims for disability compensation benefits, such as claims for service connection, an increased rating, or survivor's benefits, which were denied at the VA regional office level. The Board's objective is to produce well-reasoned, accurate, timely, and fair appellate decisions in all the cases that come before us.

As I testified before this Committee on July 13, 2006, two of the Board's most important initiatives are (1) to contain and reduce the backlog of appeals by increasing decision productivity, while maintaining high quality, and (2) to improve timeliness and service to veterans by eliminating avoidable remands in order to issue more final decisions.

I am happy to report that we have had much success in working towards both these goals, as demonstrated by comparing our past performance with that of recent years.

In Fiscal Year 1994, the Board issued 22,045 decisions with 442 full time equivalent employees (FTE). Our pending caseload stood at 47,148, and was on its way to 60,000. By Fiscal Year

1998, we had significantly improved our productivity by issuing 38,886 decisions and holding 4,875 hearings, with 483 authorized FTE.

Most recently, in Fiscal Year 2006, the Board issued 39,076 decisions. We also conducted 9,158 hearings, the highest number ever by the Board, and almost twice as many hearings as in 1998.

The Board's most significant challenge for the future is to eliminate the growing backlog. We will continue to use our resources as efficiently and effectively as possible to meet this challenge. However, despite our best efforts, we continue to receive more appeals than we are deciding. Cases pending at the start of Fiscal Year 2006 stood at 37,539, and by the end of the year rose to 40,265. This is despite the fact that the Board issued 4,901 more decisions in Fiscal Year 2006 than in the previous year.

To enable the Board to eliminate the growing backlog, the two most important goals for the Board are to continue efforts to reduce avoidable remands and increase productivity. In regard to remands, we know that veterans want timely and correct decisions with respect to their claims for benefits. For the Board to do that, the record must contain all evidence necessary to decide the claim and show that all necessary procedural protections have been provided. If the record does not meet these requirements, and the benefits sought cannot be granted, a remand for further development by the AOJ is necessary.

Remands significantly lengthen the amount of time it takes for a veteran to receive a final decision. A remand adds about a year to the appellate process. Remands not only delay individual cases, but divert resources from deciding new appeals. About 75 percent of cases remanded are returned to the Board, which increases our workload and further degrades timeliness. In addition, because by law we generally must decide the oldest cases first, processing of newer appeals is delayed when remanded appeals are returned to the Board for readjudication. Hence, eliminating avoidable remands is a goal that will provide better service to veterans and their families and, ultimately, will contribute to diminishing the growing backlog.

Since Fiscal Year 2005, when we began working concertedly with the Veterans Benefit Administration (VBA) to avoid remands to the extent possible, we have made great progress in reducing avoidable remands. To illustrate briefly, in Fiscal Year 2003, the Board issued 31,397 decisions, with a remand rate of 42.6 percent. In Fiscal Year 2004, while the number of decisions issued increased to 38,371, the remand rate soared to 56.8 percent. In Fiscal Year 2005, we issued 34,175 decisions of which 38.6 percent were remanded in whole or part. We are happy to report that in Fiscal Year 2006, we issued 39,076 decisions, with a remand rate of only 32 percent. We expect to see the remand rate to hold its own or improve even further during Fiscal Year 2007, as the Board begins to reach cases on our docket that were first decided by VBA following the initiation of its efforts to reduce avoidable remands.

By "avoidable" remands, we are referring to a class of cases in which a remand could have been avoided if the case was properly processed and reviewed in accordance with existing laws and regulations. It is important to note that under the current adjudication system a certain percentage of remands are expected for various reasons beyond VA's control. For example, some cases must be remanded to address intervening changes in the law, new medical evidence, changes in medical condition, or other due process considerations. On the other hand, some

remands can be avoided by careful development of the record and application of the appropriate law, as well as close analysis of the record and consideration of a harmless error analysis.

We continue to work closely not only with VBA, but with the Office of General Counsel (OGC) and the Veterans Health Administration (VHA) to identify and track the root causes of remands in order to provide training that will eliminate avoidable remands. Our training efforts have been considerable. Several training sessions on remand avoidance have been held for all Veterans Law Judges (VLJs) and staff counsel. We have also held joint training sessions with VBA, including a national video broadcast, on avoidable remands and evidence development. We have conducted numerous sessions on a variety of medical and legal subjects within our jurisdiction ? all designed to reduce remands and improve quality. Additionally, each of our Travel Boards has met with regional office (RO) personnel to answer questions and/or discuss shared areas of concern. Finally, we are working with VHA and VBA on the Compensation and Pension Examination Project (CPEP), which, by improving the quality of VA compensation medical examinations, will reduce a major cause of remands.

Another important challenge for the Board is to work closely with the 57 ROs and the Veterans Service Organizations to ensure that Travel Boards are dispatched as soon as a sufficient number of cases that are nearing their place on the Board's docket are ready for hearing. In 2006, in addition to 106 scheduled Travel Boards, eight unscheduled trips to Montgomery, Oakland, Columbia, Atlanta, Seattle, Detroit, Phoenix, and New York were added after the ROs provided notice that the docket was ready, for a total of 114 Travel Boards for the year. Of the 106 scheduled Travel Boards, five were split trips which visited two ROs (Lincoln/Des Moines, Fargo/Sioux Falls, Ft. Harrison/Boise, Denver/Cheyenne, and Togus/White River Junction). On the last day of each of our Travel Boards, we offer training and assistance by our staff attorneys to the RO adjudication staff. This is as much of a benefit to the Board as to the RO staff, if it precludes one case from being returned to the RO from the Board via remand for further development.

Although much has been done, we still have much to do in increasing productivity at the Board. Within existing resources, and by way of incentives and sound management, we will continue to improve by:

- (1) Eliminating avoidable remands;
- (2) Strengthening our intra-agency partnerships: Our joint training efforts with VBA, OGC, and VHA are improving decision quality and reducing remands;
- (3) Writing shorter and more concise decisions: We continue to train and encourage our VLJs and counsel to write clear, concise, coherent, and correct decisions;
- (4) Utilizing employee incentive, mentoring and training programs: A number of new programs have been introduced to increase employee motivation and satisfaction, as well as to increase productivity and decision quality;
- (5) Making judicious use of overtime: We will use overtime within existing resources to enhance productivity;
- (6) Increasing our use of paralegals: We will increase the use of our paralegals for non-

- decisional support activities, freeing up our legal staff to decide appeals;
- (7) Providing improved on-line legal research tools and analytical frameworks to aid timely and correct decision production;
 - (8) Succession Planning: The Board will continue its rigorous associate counsel recruitment program to hire the best and brightest attorneys available;
 - (9) Improve Quality: The Board will use its quality review process to identify areas of concern that require follow-up training;
 - (10) VLJs will draft some decisions, in addition to reviewing and revising drafts prepared by staff counsel; and
 - (11) Aggressive recruiting and training program to ensure full productivity by maintaining our authorized staffing levels.

We believe these measures will reduce the backlog and shorten the time it takes for a veteran to receive a fair, well-reasoned Board decision. In addition to the Board's increases in productivity, we have also improved decision quality. In Fiscal Year 2005, the Board's decision quality was 89 percent, based on 34,175 total decisions issued. We are proud to report that in Fiscal Year 2006, not only did the Board increase its total decision output by 4,901 cases, but the Board's decision quality increased to 93 percent. By decision quality, we mean that there were no substantive or procedural errors that would have resulted in the case being reversed or remanded to the Board by the United States Court of Appeals for Veterans Claims. Into the second quarter of Fiscal Year 2007, we find that this enhanced decision quality has been maintained.

Although there was an increase in quality and quantity, the Board saw its pending caseload grow significantly in 2006. As I briefly noted earlier, in addition to issuing 39,076 decisions in Fiscal Year 2006, we conducted 9,158 hearings, an increase of 582 hearings over the total held in Fiscal Year 2005 and the most ever held by the Board. However, the number of cases pending before the Board at the end of Fiscal Year 2006 was 40,265, which was close to a 3,000 case increase over the 37,539 cases that were pending at the end of Fiscal Year 2005. This increase in pending cases occurred despite the increase in the number of decisions issued of nearly 5,000 over the previous year—an increase notwithstanding the reduction in our authorized FTEs from 440 in Fiscal Year 2005 to 434 in Fiscal Year 2006. As of today's date, we have more than 28,000 cases with a pending request for a Board hearing, the highest number ever. Of these cases more than 8,000 are actually ready for a hearing. Our 114 plus Travel Boards in Fiscal Year 2007 should sharply reduce the number of pending hearings.

Although we continue to operate at the 2006 level, our attorneys and judges are significantly ahead of last year's pace in terms of productivity. I attribute this increased productivity to superb leadership in each of our Decision Teams, an unparalleled in-house training and mentoring program, and to the quality of our line attorneys in drafting complex, quality decisions in an accurate and timely manner.

As you know, we have high expectations for our counsel and Veterans Law Judges. We ask each of our counsel to write more than three complete draft decisions a week, and each of our line Judges to review, modify as necessary, and sign approximately 19 decisions a week. Over the course of the year, the Board's fair share standards call for our attorneys to complete a total of 156 timely decisions of high quality, and for each of our line Judges to complete and sign 752

decisions. In addition, each Judge is expected to complete at least three week-long Travel Board trips per year, in which they hear cases at one of the 57 ROs. A senior counsel accompanies the Judges during these Travel Board trips to assist in the conducting of the hearings and to provide training and other requested assistance to the RO staff.

In conclusion, we will continue working to develop new and creative solutions to the challenges we face in order to fulfill our statutory mission to hold hearings and provide timely, high quality decisions to our Nation's veterans and their families.

I am pleased to answer any questions you or your colleagues may have.