

Mr. Rick Surratt, Deputy National Legislative Director, Disabled American Veterans

STATEMENT OF
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OF THE
DISABLED AMERICAN VETERANS
BEFORE THE
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES SENATE
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Mr. Chairman and Members of the Committee:

In response to your invitation to testify today, I am pleased to present the views of the Disabled American Veterans (DAV) and its Auxiliary on the functioning and performance of the claims and appeals processes of the United States Department of Veterans Affairs (VA).

Unlike any other group of beneficiaries seeking government assistance, our military veterans inherently and justly deserve special status, special benefits, and special treatment by and on behalf of the grateful citizens of the nation whose interests they served to protect and preserve. We are beholden and duty bound to honor this national debt above all others. This principle resides at the very core of and is inseparable from our patriotic American values.

Congress created VA to serve the interests of this special group of government beneficiaries in a manner consistent with our irrevocable indebtedness to them and our profound moral obligation to bestow upon veterans the benefits and services they so rightfully deserve consequent to and in return for their extraordinary sacrifices and contributions to our society. Because of this special status of the veteran as a claimant, VA has the objective of ensuring the veteran obtains benefits to which he or she is entitled. VA therefore has a higher responsibility to its claimants than the ordinary administrative agency. VA has the responsibility of being supportive and helpful to veterans in their efforts to obtain benefits, rather than leaving it to the veteran to prosecute his or her claim without guidance and without government aid.

With this duty upon VA to assist the veteran in the full development and prosecution of his or her claim and with the obligation upon the government to ensure all avenues of entitlement are entertained and all pertinent legal authorities are considered, the proper outcome should be all but assured in a perfect world. However, a mass adjudication system as large and burdened as VA's that often involves judgments on complex questions, and sometimes conflicting evidence, is unavoidably imperfect. That is why one of the DAV's principal functions as a veterans' service organization is its program of assistance to veterans in benefits counseling and claims representation.

For this purpose, the DAV employs a corps of 260 National Service Officers (NSOs) who are stationed principally in Veterans Benefits Administration (VBA) regional offices nationwide. From our fleet of Mobile Service Office vehicles, our NSOs also provide counseling and claims assistance in rural communities, intercity locations, disaster areas, Native American reservations,

NASCAR races, conventions, and other various holiday and community events. To expand the availability of assistance, the DAV instituted a program of training and certification of state and chapter service officers. We certified 889 service officers in 2003 and 1,078 service officers in 2004.

For assistance to service members separating from active duty, the DAV employs 23 Transition Service Officers (TSOs). In conjunction with Transition Assistance Programs and Disabled Transition Assistance Programs, our TSOs provide benefits counseling and claims assistance at more than 80 military installations throughout the nation.

Our free services include representation before the Board of Veterans' Appeals (BVA) for our clients who elect to appeal unfavorable VA field office decisions. We employ attorneys and a non-attorney practitioner to provide representation to appellants before the United States Court of Appeals for Veterans Claims (CAVC or the Court). Our attorneys also take appeals to the United States Court of Appeals for the Federal Circuit.

From our involvement in benefits counseling and the claims and appellate processes at all levels, we are in a position to observe the strengths and weaknesses of the VA's system for administering the benefit programs, particularly the compensation and pension program. Benefits for disabled veterans and their dependents and survivors are at the core of the programs VA administers. The effective administration of these programs, including appellate review of claims decisions, is essential to the fulfillment of VA's momentous mission to care for our Nation's veterans.

Historically, VA has struggled in this mission. Problems with claims processing, accurate decisions, and timely benefits delivery have plagued and challenged VA for several years. Many underlying causes acted in concert to bring about this now intractable problem. In the early 1990s, judicial review of BVA decisions began to expose arbitrary and unlawful practices. The Court of Veterans Appeals, now CAVC, imposed requirements that VA decisions be better reasoned, better explained, and better supported by the record. In turn, BVA began to reverse and remand more field office decisions, requiring more rework. Military downsizing resulted in additional claims. Despite an increasing workload, annual appropriations provided for reduced staffing levels. VA also began to lose many of its experienced adjudicators to retirement, without sufficient remaining proficient adjudicators to both decide the pending claims and train new employees. These factors combined to increase pressure on adjudicators to increase production with an even further compromise of quality. More errors required more rework and resulted in more appeals, leading to even greater backlogs and declines in timeliness with a consequent vicious cycle of increasing inefficiency.

These increasing problems in compensation and pension claims processing triggered various studies to identify the underlying problems and recommend remedial courses of action. In 1993, VA created its Blue Ribbon Panel on Claims Processing. In 1994, Congress established the Veterans' Claims Adjudication Commission to carry out a study of the claims adjudication system. In 1995, Congress commissioned a study by the National Academy of Public Administration (NAPA) of veterans' claims processing. In response to concerns about the quality of its service to claimants, VA created a Business Process Reengineering (BPR) Office in November 1995.

The Blue Ribbon Panel on Claims Processing made more than 40 proposals to improve efficiency in claims processing. These proposals included improved technology, redesigned work processes, and additional training.

The Veterans' Claims Adjudication Commission transmitted its final report to Congress in December 1996. Unfortunately, the Commission's study was poorly focused and strayed away from its charge to evaluate the efficiency of the existing claims adjudication processes and procedures. The recommendations received little serious consideration.

After conducting a study of the claims processing system, the BPR team issued its report in December 1996. The report called for comprehensive changes in the way VA processed compensation and pension claims. The report acknowledged that poor quality and the resulting necessity to rework claims were the primary problems accounting for overload on the system. The BPR team identified several core problems leading to poor quality. The team found that the segmented or compartmentalized claims process left no one accountable for quality in the final product. Because the claims and supporting evidence passed through multiple steps and many hands, errors often occurred. The team found that management placed the emphasis on production and timeliness standards, or 'making the numbers,' instead of producing quality decisions. This lack of emphasis on quality resulted in high error rates, inconsistent decisions, and the appearance of arbitrariness in VA's decisions, which led to a relatively high number of appeals and necessitated more rework of claims.

The recommended plan adopted process changes designed to remove the conditions responsible for errors and inefficiency. Quality and thus efficiency and improved service to claimants were to be the primary goals, supported by training and a certification process for adjudicators, along with better quality review and accountability mechanisms. Implementation plans were compiled in a report issued in June 1997, and the BPR plan was incorporated in the Compensation and Pension Service's (C&P's) business plan and later in VA's first 5-year strategic plan under the Government Performance and Results Act (GPRA), submitted to Congress in September 1997.

In its strategic plan, VA indicated that it planned to attack quality problems in its products by 'doing it right the first time.' However, if a mistake did occur, it would be candidly acknowledged and corrected as a priority. VA would assess and improve the level of accuracy for all work and correct errors in the shortest possible time as appropriate for each business line. Some of VA's performance goals were to make correct decisions 97 percent of the time; decrease the BVA remand rate from 43.7 percent to 20 percent; and improve the quality of disability examinations so that 99 percent were sufficient to adjudicate claims. The DAV and other veterans' service organizations strongly supported the BPR initiative.

From its comprehensive study of VBA's operations, NAPA issued its report to Congress in August 1997. NAPA was critical of VBA's past and planned staff reductions. NAPA noted that no sound basis existed for VA to conclude fewer employees would be able to handle the future workload. The NAPA study also concluded that VBA's most fundamental need was to develop the leadership and organizational capacities necessary to enable it to plan and manage its functions strategically.

NAPA found that VBA management had a history of operating in a reactive rather than a proactive mode. NAPA observed that VBA focused principally on short-term issues, without any comprehensive, effective long-term strategy to solve its problems and permanently improve program performance and service delivery. NAPA saw a repetitive pattern in which VBA was good at generating plans but not good at carrying them out. According to NAPA, VBA's efforts to develop comprehensive performance improvements had failed because of a lack of precision planning and the discipline required to push a generalized vision through to operational reality. During the implementation process, systematic oversight, tracking, and coordination had been inadequate. No systematic cycle had existed for review of effectiveness of the results of implementation. No management action was taken to keep the organization focused on achieving its goals.

Additionally, because lines of accountability were not clear, VBA leaders were not held firmly accountable for high levels of performance. NAPA noted that VBA's operational control is decentralized, with power residing in the area and regional office directors. NAPA found that a sense of powerlessness to take action permeated VBA. In turn, field personnel perceived VBA's Central Office staff as incapable of taking firm action. NAPA said that a number of executives interviewed by its study team indicated VBA management officials have difficulty giving each other bad news or disciplining one another. NAPA concluded that, until VBA is willing to deal with this conflict and modify its decentralized management style, it will not be able to effectively analyze the variations in performance and operations existing among its regional offices. Neither would it be able to achieve a more uniform level of performance. Regarding C&P service especially, NAPA concluded that the C&P director's lack of influence or authority over the field office employees would greatly hamper any efforts to implement reforms and real accountability. NAPA recommended that the Under Secretary for Benefits strengthen C&P influence over field operations and close the gaps in accountability.

NAPA observed that accountability is the key. A no-nonsense approach to accountability disciplines the strategic management cycle. Top leaders must establish clear, unequivocal accountability for performance and provide full support to executives and organizations charged with accomplishing goals. However, leaders must be willing to discipline those who are not succeeding, according to NAPA.

NAPA acknowledged some steps in the right direction, such as efforts to implement GPRA methods and the BPR plan. The real question, according to NAPA, was whether VBA could implement these initiatives successfully.

In May 2001, VA Secretary Anthony Principi created the VA Claims Processing Task Force to identify and recommend to the Secretary steps that VA could take to increase productivity, reduce processing times, and shrink the disability claims backlog without compromising the accuracy of decisions or service to veterans. Acknowledging the several prior studies and efforts to implement their recommendations, the Task Force observed that VBA had developed many initiatives in the belief that they would produce a better capability to adjudicate claims. Regarding these efforts, the Task Force concluded:

While some of VBA actions have been important first steps, the Task Force believes that VBA Central Office decisions regarding choices about how to improve the processing of claims

has exacerbated the claims backlog crises. VBA has also created many problems through poor or incomplete planning and uneven execution of claims processing improvement projects. VBA Central Office choices have essentially served to reduce the availability of skilled labor for processing claims, while diverting experienced staff to implement unproven process changes that were poorly planned or managed

VA Claims Processing Task Force, Report to the Secretary of Veterans Affairs, iii (Oct. 2001). The Task Force summarized the essence of its own findings: 'The basic overarching theme of the Task Force findings is that flaws exist in Accountability, Communications, and Change Management.' Task Force Report, at iii.

The Task Force's specific findings echoed many of the same deficiencies and challenges identified in the previous studies of the compensation and pension claims processing system. For example, the Task Force acknowledged the fundamental flaw in the system in which rework overloads the system: 'The current C&P sequential workflow was not designed to deal efficiently with rework reintroduced into the process. Rework includes such items as remands, cases under special review, and pending cases that have aged for some reason, requiring that they be introduced back into the workflow more than once over a period of time.' Task Force Report, at 28. The Task Force also acknowledged the detrimental effect of appeals upon the system. Beyond the added workload, the Task Force noted the unfairness to claimants from delays due to appeals: 'Currently, both the time delays to handle appeals and the time to correct remanded decisions are both unreasonable and unfair to veterans awaiting decisions.' Task Force Report, at 14.

The Task Force identified several systemic deficiencies contributing these core problems. Like NAPA, the Task Force observed that VBA improvidently reduced its staffing:

The effective management of paper documents is a critical success factor in C&P efforts to process claims in a timely manner. However, VBA reduced the size of its Regional Office administrative workforce based on unrealistic assumptions about the benefits of case management and information technology. As a result, VBA Regional Offices are not staffed with the number and types of personnel with the skills necessary to plan and manage a complex administrative support process.

Task Force Report, at 49. The Task Force found that limited staffing for claims adjudication also poses a difficult problem. Referring to the dilemma of investing employee time in training and implementing process reforms versus the crisis of completing the existing workload, the Commission characterized the challenge facing VA as follows:

With increasing workload, VBA Regional Offices face the practical problem of having to allocate a fixed level of direct labor hours to accomplishing an increasing volume and complexity of work. . . . Additionally, VBA's workforce is faced with the challenge of having to allocate direct labor hours to non-claim tasks, such as the planning and implementation of training and modernization initiatives.

Task Force Report, at 3. In this regard, the Task Force stated further: 'VBA took trainers from the service centers to conduct training. This has naturally reduced productivity significantly. . . .

VBA must develop a strategy to bring on new employees in a manner that allows for timely and effective training of new employees with minimum impact on the performance of Regional Offices.' Task Force Report, at 78. 'Training new C&P employees pulls experienced staff out of the direct claims processing system, which leads to increased time to process claims.' Task Force Report, at 82.

The Task Force also noted the threat to the viability of VA's aging data system, the Benefits Delivery Network (BDN), as a consequence of reduced resources and limited staffing:

BDN operations and support are approaching a crisis stage with the potential for BDN operational performance to degrade and eventually cease. This situation has occurred because of documented VBA Central Office policy decisions that limited the funding of BDN upgrades, reduced the size of the Hines ITC workforce, and stopped new hiring for the past 5 years.

Task Force Report, at 61.

In addition to the need for a solution to the problem of dedicating staff to the chore of training new employees, the Task Force pointed to the need for more effective training: 'VBA appears to have no apparent fully integrated training plan and program. The VBA Office of Employment Development and Training appears to be neither encouraged, nor equipped, to develop a comprehensive plan. . . . VBA has not put together a sorely needed training infrastructure.' Task Force Report, at 24. The Task Force summarized some of the defects in adjudicator training:

The training program was not geared to grade levels or competencies at each grade level in a job series. Employees were not certified as having the skills needed to do their jobs. Many of the instructors were not certified. In addition, VBA did not have mandatory training hours for all employees. This creates a gap for employees at the journeyman levels, as training programs are not required. No effort was made to link the learning activities to increased performance. Some measure is needed to verify the content of educational programs is achieving the learning objectives of the organization.

Task Force Report, at 79.

Lack of accountability also figured prominently in the defects the Task Force found: 'there is little evidence of accountability for decisions and operations.' Task Force Report, at 50. 'This single attribute?accountability?is the most serious deficiency in the VBA organization.' Task Force Report, at 17. The Task Force described the nature and intended effect of real accountability:

The term accountability includes not only the proposition that a leader is responsible for the actions of the group but also is accountable for the results of those actions or inactions. Accountability also assumes that systems are in place to both measure results and to require positive actions when the objective is not achieved or when adjustments must be made. It is important to establish direction, to expect that action will be taken, and to provide the tools necessary to execute the action.

Task Force Report, at 16.

In addition to a general lack of accountability, the Task Force attributed much of the inability to enforce accountability to a weak management structure. Pertinent comments were as follows:

[T]he VBA Office of Field Operations (OFO) is not organized properly to function in a leadership role. . . . Not only do the incumbents have an exceptionally large span of control which cannot be exercised effectively but also the obvious friction that seems to exist between the OFO offices and the Central Program Offices (especially C&P) which is debilitating to both headquarters and Regional Office organizations.

Task Force Report, at 17.

C&P directives are specifically undermined by tepid support or no support from members of the OFO organization.

Task Force Report, at 18.

At present, two Deputy Assistant Under Secretaries (Office of Field Operations) directly oversee the 57 Regional Offices. The fact seems to be that oversight is neither effective nor really expected.

Task Force Report, at 70-71.

VBA's Central Office leadership gives the impression of neither demanding adherence to nor of being completely aware of the actual compliance to directives at the individual Regional Office level. . . . If there is no base structure, there cannot be reliable measurement or any reasonable assurance that claims decisions will be made as uniformly and fairly as possible to the benefit of the veteran.

Task Force Report, at 16.

With this lack of accountability, the Task Force found a lack of enforcement of program directives and policies: 'Inconsistent and inadequate implementation of VBA Central Office directives at Regional Offices was prevalent. Not only did interpretations differ as to their meaning, but also many at the working level frequently seemed unaware of the existence of certain policy changes or did not realize the importance of the information when it was received.' Task Force Report, at 18. 'It is apparent to the Task Force that there is wide variance in implementing instructions and directives, as well as IT programs, at the Regional Office level, which has led to confusion and lack of uniform adherence to accepted procedures.' Task Force Report, at 71.

The Task Force found that management weaknesses were an underlying cause of the poor lines of communication: 'As an example of the need for clear lines of communication and control, VBA has no effective method of direct oversight to ensure consistent implementation of directives.' Task Force Report, at 71.

Similarly, there was a failure to manage change for the purpose of bringing about the reforms necessary to overcome the persisting claims processing problems:

Much of the problem of transforming the current claims processing system into an efficient system rests on an inadequate management plan; implementation that too often has been undisciplined and incoherent; and a failure to establish priorities and achievable completion dates. Additionally, there were insufficient requirements for feedback reporting and accountability by Regional Office managers to the Under Secretary and senior VBA managers. The variability within the system and among the Regional Offices indicates a lack of follow-through at VBA Central Office. Task Force members frequently found programs that had not been implemented fully or according to schedule and, at times, not implemented at all.

Task Force Report, at 55.

The Task Force noted NAPA's identification of this lack of accountability and recommended solution: 'It should be noted that the NAPA recommendation (4NAPA-5) stated that the Under Secretary for Benefits should develop a formal organizational chart for VBA and its components that closes the gaps in accountability between the Regional Offices and VBA Central Office.' Task Force Report, at 71.

From these findings, the Task Force made several recommendations to correct the problems. Some were stopgap measures, such as specialized adjudication teams, to reduce backlogs of older cases, and others involved permanent reforms. Some were to be done as soon as possible, and others were to be implemented over time. The Task Force warned that failure to address the fundamental flaws in the system involving accountability, communications, and change management, 'will ensure that VBA continues to be perceived as a reactive, short-term focused, uncoordinated entity.' Task Force Report, at iii.

In the DAV's view, many of these recommendations appropriately targeted and addressed administrative deficiencies contributing to the overall problem. On the other hand, some recommendations were shortsighted in our view. For example, greater resources were to be allocated to higher performing regional offices only. Conversely, poorer performing offices would generally receive no increases in staffing or other resources to aid in improvement. To us, that represented continued acceptance of management failures. Instead of assisting in and insisting on improvement in performance, VBA would simply punish the poorer performing regional offices with fewer resources. In addition to acceptance of management inability to induce change, this would seem to exacerbate poor performance and put improvement beyond the ability of underachieving regional offices. Moreover, it would punish veterans under the jurisdiction of the less proficient offices.

In any event, the Task Force was calling upon an entrenched bureaucracy to change its ways, and, while many of the recommendations were beneficial, they did not focus enough on correcting the primary, or root, causes of claims backlogs in our view. Although the Task Force recommended improvements in training, recommended the imposition of means to measure and enforce individual accountability, and recommended a stronger management structure, the necessary improvements in quality and timeliness have not been forthcoming. We believe VBA still has not taken the steps necessary to ensure adjudicators 'get it right the first time.'

VA has been unable or unwilling to break the cycle in which production pressures drive a short-term quest for production that compromises quality for quantity and, over the long term, proves

counterproductive. In The Independent Budget (IB) for fiscal year 2005 at pages 28-29, we observed that emphasis on production targets with a corresponding compromise in quality had apparently begun to cause anew a decline in timeliness as we had warned in the IB for the previous year. These persisting problems have prevented disabled veterans from receiving, within a reasonable time, the financial assistance they often urgently need to relieve the economic effects of disability. We also emphasized that VA cannot overcome these problems without adequate resources.

As of May 14, 2005, there were 506,105 compensation and pension claims pending. Of these, 345,237 were claims requiring disability rating actions, with 72,701 of the rating cases, or 21.1 percent, in a pending status for more than 180 days. This number of currently pending rating cases represents a substantial increase above the 253,597 cases pending at the end of fiscal year (FY) 2003 and the 321,458 cases pending at the end of FY 2004. In its FY 2006 Budget Submission, VA projected that it would reduce the number of rating claims pending at the end of FY 2005 to 282,876. With this backlog increasing and a little more than one-third of the fiscal year remaining, it appears VA will finish the year with a loss of ground rather than a gain against the backlog.

According to the 'Budget Highlights' in the President's Budget Submission, one of VA's highest priorities is to '[i]mprove the timeliness and accuracy of claims processing.' The Budget Submission states: 'Funds are included in the Veterans Benefits Administration to sustain progress made under the Secretary's priority of improving timeliness and accuracy of claims.' In another statement, the Budget Submission declares: 'As a Presidential initiative, improving the timeliness and accuracy of claims processing remains the Department's top priority associated with our benefit programs.' However, it appears that this budget abandons efforts to improve on the intolerable situation in which VA has large backlogs of pending claims and in which benefits awards to veterans are delayed as a consequence. The Budget Submission for FY 2004, for example, set a goal of reducing the average processing time for compensation and pension claims from a projected 165 days in FY 2003 to 100 days in FY 2004, with a strategic target of 90 days. The Budget Submission for FY 2005 set a goal of reducing the average processing time for compensation and pension claims from a projected 145 days in FY 2004 to 100 days in FY 2005, with a strategic target of 90 days. The FY 2006 Budget Submission revises these figures to show that average was actually 166 days in FY 2004, that the time will be reduced to 145 days in FY 2005, and that the goal for FY 2006 is also 145 days. The strategic target has been increased from 90 days to 125 days. This demonstrates that the resources requested are insufficient to meet a goal that VA portrays as a 'top priority.' These figures call into question the genuineness of this stated goal.

Adequate resources are a key element of an efficient and effective benefits delivery system. Adequate resources permit VA to perform training to bring the proficiency of adjudicators up to acceptable levels. Undeniably, veterans' benefits law and the medical questions involved in disability decisions are often complex; inescapably, adjudicators must be well trained. Effective training requires resources, that is, knowledgeable and experienced instructors who have the necessary time to devote to instruction and who utilize uniform lesson plans and available technology. In turn, well-trained adjudicators must have adequate time to thoroughly review evidence and make well-researched and well-reasoned decisions. With the unavoidable

variations in proficiency, competent quality reviewers must review a sample of the decisions of each adjudicator and overseers must impose remedial measures where quality reviews demonstrate deficiencies, if the system is ever to be efficient. Management, from the regional office level to the top, must constantly monitor performance and enforce accountability. Though there always must be a reasonable balance between time allowed for decision making and the necessity to stay abreast of the workload, quality cannot take a backseat to the blind pursuit of production quotas. As obvious as these realities are, VBA seems to set them aside in its reactive mode of management where field offices are directed to reduce backlogs at all cost.

To complement its Systematic Technical Accuracy Review (STAR) program, which measures quality at the national level, VA announced in the year 2000 a new initiative for quality review at the individual level. Acknowledging that management needed a tool to consistently monitor individual performance, VA created the 'Systematic Individual Performance Assessment' (SIPA) program. Under this program, VA would review an annual sample of 100 decisions for each adjudicator to identify individual deficiencies, ensure maintenance of skills, promote accuracy and consistency of claims adjudication, and restore credibility to the system. The reviewers would perform related administrative functions, such as providing feedback on reviews, maintaining reports, and playing a role in employee development and ongoing training. Unfortunately, VA abandoned this initiative during 2002, and proficiency is now apparently subjectively assessed by supervisors based on their day-to-day perceptions of employee performance. Without any actual systematic review of samples of an individual adjudicator's decisions, deficiencies are more likely to go undetected and unremedied. Here again, we must question whether the culprit behind abandonment of SIPA was inadequate resources.

The VA Claims Processing Task Force addressed inadequacies in adjudicator training in substantial detail. Task Force Report, at 77-81. From its findings, the Task Force recommended centralization and integration of VBA training. This recommendation included a comprehensive list of specific measures to improve the content and delivery of training. Our understanding is that many of these measures have not been implemented, that VA has no structured or ongoing training for journeyman adjudicators, and that no procedure exists to target training to deficiencies demonstrated by STAR reviews. Therefore, we believe the Committee may wish to specifically query VA about its training program, with specific reference to the details of the Task Force recommendation.

Again, the lack of a methodical and ongoing assessment of individual proficiency, the lack of a structured and uniform national program of training for journeyman adjudicators, and the lack of any feedback connection between training and STAR assessments can be expected to lead to and tolerate poor quality and a lack of national uniformity in claims decisions. Recent print media articles by investigative reporters using VA-generated data exposed geographical variations in the average compensation levels of veterans.

This media attention prompted VA to have its Inspector General (IG) investigate the claims adjudication system. The IG's office found that demographic factors accounted for some of the variance. Differences between claims processing characteristics of the states studied generally did not reveal correlations to variances. However, the inconsistency between states was significant for veterans rated 100 percent for posttraumatic stress disorder, for example. The IG

report attributed this to the subjectivity of the rating criteria. Sixty-five percent of the adjudicators who responded to a survey by the IG's office reported insufficient staff to ensure timely and quality service. Fifty-seven percent of the adjudicators responded that it was difficult to meet production standards if they took the time to adequately develop claims and thoroughly review the evidence before deciding the claim.

To aid us in providing the Committee information for this oversight hearing, we asked the supervisors of our national service offices to provide assessments of the strengths and weaknesses of their VA regional offices. Rather than have them respond to a list of issues compiled by our headquarters staff, we allowed them to report based on their individual perceptions and views of the most notable or prominent factors responsible for the performance of their regional offices.

Among the favorable comments, the experience, competency, attitudes, and decision making of decision review officers (DROs) were the most frequently mentioned. Many of our supervisors also reported good cooperation between veterans' service organizations and regional office management, although there were also several who reported less cooperative relationships and open communication.

The number of comments about inadequate VA staffing by far exceeded all others, favorable and unfavorable. About two-thirds of our supervisors pointed specifically to overworked VA employees as a serious problem responsible for poor performance. Associated with this inadequate adjudication staff were frequent comments that management pushed for production over quality and that there were timeliness problems in developing and deciding claims, as well as authorizing awards, and completing actions on appeals and remands. Several offices reported that VA managers diverted DROs from their regular duties to work these older claims and constantly required employees to concentrate on reducing the backlogs of certain types of claims that had been neglected or allowed to remain pending for the longest periods of time. The second most frequently mentioned problem was inexperienced and inadequately trained adjudicators due to a high rate of employee turnover, complicated by insufficient staff or time for training. Many of our supervisors reported low morale among VA employees consequent to the burdens and problems stemming from understaffing. Poor quality in VA disability examinations was mentioned by some of the supervisors. A frequently occurring criticism was the observation that, contrary to law, VA adjudicators insist on ordering VA examinations where treatment records provide all the medical findings necessary for a decision. Another recurring comment was that adjudicators do not actually consult the laws, regulations, and other legal authorities to make decisions, but rather rely almost totally on standard formats in the computer-assisted rating tool, Rating Board Automation 2000, to make decisions, thereby omitting consideration of pertinent laws and regulations in some instances.

Appellate workloads and dispositions provide insight into the quality of VA regional office claims decisions. In our testimony here, we focus on compensation and pension claims processing inasmuch as that is where the challenges are the greatest and the problems persist. Approximately 95 percent of BVA's workload involves disability compensation and pension claims. Because appellate review is so essential to ensuring justice in an unavoidably imperfect

adjudication system, the proper functioning of appellate processes is of major importance, especially where the rights and benefits of our veterans are involved.

As a statutory board, BVA was created in recognition of the importance of an effective appellate body within the VA administrative process and after experiments with other variations of appellate review had proven unsatisfactory. By consolidating and centralizing the appellate board in Washington, D.C., under the authority of the agency head, then the Administrator of VA, the problems of decentralization, lack of uniformity, and the lack of finality were addressed through a clearer sense of direction. By Executive Order issued July 28, 1933, promulgated as Veterans Regulation No. 2(a), President Franklin D. Roosevelt established BVA. That Executive Order later became law through operation of a special statutory provision. By Veterans Regulation No 2(a), the President mandated that BVA would sit at VA's Central Office, be directly under the Administrator, provide one review on appeal to the Administrator, afford 'every opportunity' for a 'full and free consideration and determination,' provide 'every possible assistance' to appellants, have final authority, and take final action that would be 'fair to the veteran as well as the Government.' Since its inception, BVA has operated separate and independent from the other elements of VA. While there have been some changes in its configuration since 1933, BVA has retained its basic concept and mission.

As it exists today, BVA's mission is still to make the final decision on behalf of the VA Secretary in claims for benefits. Section 7104 of title 38, United States Code, provides: 'All questions in a matter which . . . is subject to a decision by the Secretary shall be subject to one review on appeal to the Secretary. Final decisions on such appeals shall be made by the Board.' The Board operates under various statutory provisions codified at chapter 71 of title 38, United States Code, as well as regulations in part 19 and rules of practice in part 20 of title 38, Code of Federal Regulations.

Although BVA generally makes the final decision in an appeal, the appellate process begins with the VA field office that made the decision appealed, referred to as the agency of original jurisdiction, and, in some instances, action by the agency of original jurisdiction in an appealed case alleviates the need for a final decision by BVA. An appeal may be favorably resolved by the agency of original jurisdiction before the case is transferred to BVA or after the case has been sent back, 'remanded,' to the agency of original jurisdiction to cure some procedural omission or record defect. Up to 50 percent of the appealed cases are resolved by the agencies of original jurisdiction and never reach the Board. About 75 percent of the remanded cases are returned to the Board for a final decision, however.

A veteran or other claimant initiates an appeal by filing a 'notice of disagreement' with the agency of original jurisdiction. The agency of original jurisdiction may then take such additional development or review action as it deems proper. If such action does not resolve the disagreement, the agency of original jurisdiction issues to the appellant a 'statement of the case' that contains a summary of the pertinent evidence, a citation of the pertinent legal authorities along with an explanation of their effect, and an explanation of the reasons for the decision on each issue. To complete, or 'perfect,' the appeal, the appellant must then file with the agency of original jurisdiction a 'substantive appeal,' a written statement specifying the benefit or benefits sought and the bases of the appellant's belief that he or she is legally entitled to the benefit or

benefits. Upon receipt of the substantive appeal, VA enters the case on the BVA docket. The BVA docket is a list of cases perfected for appellate review compiled by the chronological order in which the substantive appeal was received. The Board receives these cases for review by their order on the docket, although a case may be advanced on the docket for demonstrated hardship or other good cause. The Board must afford each appellant an opportunity for a hearing before deciding his or her appeal. The hearing may be held before the BVA at its principal office or at a VA facility located within the area served by appellant's VA regional office. The Board may enter a decision that orders the granting of appropriate relief, denying relief, or remanding the appeal for further action by the agency of original jurisdiction.

The Board may reconsider its decision upon an order by its chairman on the chairman's initiative or upon a motion by the claimant, and the Board may correct an obvious error in the record without regard to an order for reconsideration. The Board is also empowered to revise its decision on grounds of clear and unmistakable error. The Board may undertake review on grounds of clear and unmistakable error on the Board's own initiative or at the request of the claimant.

Claimants for veterans' benefits who believe BVA made factual or legal errors in deciding their claims may appeal to CAVC. The Court may affirm or reverse the BVA decision, or remand for further action. The landmark legislation enacted in 1988 that subjected BVA decisions to the scrutiny of an independent court has necessitated positive reforms in BVA decision-making. Because the Board's decisions must be justified with an explanation of the factual findings and legal conclusions and because VA must defend its decisions in court, denials that go against the weight of the evidence or law have declined. The Board allows and remands substantially higher percentages of appeals than it did before judicial review.

During 2004, 2,234 claimants appealed to CAVC. The Court decided 1,780 cases, with an average processing time from filing of the appeal to disposition of 392 days. Of that total, 1,087 cases, or 61 percent, were either reversed/vacated and remanded or remanded because of some substantive error or procedural defect. This reflects a high error rate among those BVA decisions appealed to the Court.

During FY 2004, 108,931 new notices of disagreement were received by VA, 49,638 appeals were perfected and added to BVA's docket, 39,956 cases were physically transferred from agencies of original jurisdiction to BVA, and the Board decided 38,371 cases. The Board began FY 2004 with 27,230 cases pending before it and ended the year with 28,815 cases pending. Accordingly, the number of new appeals added to the Board's docket during the year exceeded the number of cases it decided by 11,267, and the number of new appeals added to the Board's docket exceeded the number of cases transferred to the Board for a decision by 9,682. The Board decided 1,585 fewer cases than it received from field offices.

At the end of FY 2004, there were more than 161,000 cases in field offices in various stages of the appellate process, including the 31,645 on remand. Some of these appeals will be resolved at the field office level, but about three-quarters of them will come before the Board. At the end of March 2005, there were 51,508 cases on the BVA docket.

During FY 2004, the average time for resolving an appeal, from the filing of the notice of disagreement to the date of the decision, was 960 days. Of this total, 734.2 days was the average time an appeal was pending in the field office, from the notice of disagreement to the transfer of the case to BVA, with an average of 225.6 days from the date of receipt of the case at BVA to the date of the decision. As of April 30, 2005, the average total days for cases pending in the field was 830 days and the average time at BVA was 204 days. Of course, for those cases remanded, the total processing time is considerably longer. In FY 2004, an additional 155.6 days were added to the total processing time of appeals for the time the case spent at BVA the second time following the remand, and this did not include the number of days the case was on remand at the field office. During FY 2004, 7,140 cases were returned to the Board following remands. The remands took an average of 22 months. As noted, there were 31,645 cases on remand at the end of 2004. Of the 38,371 cases decided by BVA in FY 2004, approximately 21 percent had been previously remanded. With these long processing times, far too many disabled veterans die before their appeals can be decided. Three obvious conclusions follow from these numbers: (1) most of the delay in these unreasonably protracted appeals processing times is at the field office level, (2) far too many cases must be remanded more than once, and (3) multiple remands add substantially to the workload of BVA.

The Board allowed 17.1 percent of the cases it decided during FY 2004. Approximately 24 percent of those allowed cases had been previously remanded. The Board remanded 56.8 percent of the cases it reviewed during FY 2004. Of those remanded cases, 18 percent had been remanded previously, suggesting that the field office did not fulfill the Board's instructions in the remand order. Together, the allowed and remanded cases represented 73.9 percent of the Board's total case dispositions in 2004. Denials amounted to only 24.2 percent of the total dispositions. In addition to noting the high percentage of cases remanded multiple times, three conclusions can be drawn from these percentages: within these appealed cases, (1) agencies of original jurisdiction have denied many meritorious claims, (2) agencies of original jurisdiction have denied many cases without proper record development, and (3) only a relatively small percentage of these appellants had unwarranted appeals.

While the high remand rate can be viewed generally as an indicator of poor quality, it must be noted, however, that not all remands are appropriate. For example, 6,355 cases involved a remand for a new examination and 'current findings' because of a 'stale record' in FY 2004. That is an invalid reason to remand an appeal. When a veteran appeals, he or she is challenging the propriety of the decision on the record at the time the agency of original jurisdiction made the decision. If the examination or other medical evidence provided adequate medical information for an adjudication at that time, no additional evidence is necessary to decide the appeal. The time that lapses between the time of the initial decision and the decision on appeal, while often protracted, has no bearing on the merits of the appeal and is irrelevant as a matter of law. Only when BVA finds an inadequacy in the examination, or the record otherwise, is a remand appropriate to gather additional evidence. Appellants have the option to submit additional evidence to corroborate evidence already of record, shed additional light on the factual questions, or otherwise strengthen or reinforce the appeal, and that evidence is for consideration, of course, but that rule does not provide any grounds to remand where the existing record is complete and the evidence is sufficient for a fair and sound decision. Again, with an adequate record, the

question on appeal is not the factual state of affairs today or degree of disability currently, but whether the decision was correct or incorrect when it was made.

In, VAOPGCPREC 11-95, a decision that is legally binding upon VA and Board, the VA General Counsel held that BVA is 'not required . . . to remand an appealed disability-benefit claim solely because of the passage of time since an otherwise adequate examination report was prepared.' Other rules such as those in sections 3.104 (a) and 3.105(e) of title 38, Code of Federal Regulations, prescribe procedures and due process requirements for addressing actual demonstrated changes in disabilities that occur following final rating actions. Remands on the premise that an examination is 'stale' are unlawful, waste resources, and unnecessarily delay appellate decisions and benefit awards. Where an examination at the time of an initial adjudication was adequate for a determination on the degree of disability then present, where that examination supported a rating higher than the one assigned by the agency of original jurisdiction, and where BVA affirms that erroneous rating based on a later examination?perhaps years later?that showed intervening improvement in the disability, the BVA decision is unlawful. The decision is unlawful because its effect is one of a retroactive reduction in a disability evaluation contrary to section 5112(b)(6) of title 38, United States Code, and without observance of due process mandated under section 3.105(e).

In FY 2004, BVA remands were for new examinations in 22,987 cases. Of that total, 16,632 were for reasons other than stale records or examinations, such as for clarification of diagnoses and to correct incomplete medical findings. The most prevalent reason for remand was to obtain additional evidence beyond that obtained by the agency of original jurisdiction. Among the cases remanded in FY 2004, 48,624 included remands to obtain additional evidence. Other reasons for remands were to complete various procedures or actions previously omitted or required by intervening changes in law or circumstances.

Our service officers tell us that a greater portion of the appeals could be resolved at the regional office level if adjudicators there actually read and considered the statements on the substantive appeal and the service officers' arguments on the 'Statement of Accredited Representative in Appealed Case.' These arguments are entered while the appeal is still before field office and are directed at field office adjudicators. Based on arguments of inadequate exams, incomplete record development, and other errors, BVA will summarily remand a case where the error complained of is fairly clear on its face. Conscientious field office adjudicators could resolve such errors more promptly and without necessity for BVA review by merely reading the arguments. Apparently, time constraints and the lack of any production credit for such reviews act as a disincentive for another look by an adjudicator at these stages of the appeal. Reduction of the workload on BVA and avoidance of the added cost of consideration by BVA should provide an incentive for VBA management to correct this problem, however.

In addition to the burden of an increasing workload, reductions in its staffing levels for BVA in the past few years add to the strain upon the Board. Despite these increasing workloads, the President's FY 2006 budget again calls for a further decrease in staffing from 440 fulltime employees (FTE) to 434 FTE. This would be down from 455 FTE in FY 2001. If future backlogs and delays in appellate processing are to be avoided, BVA must have the additional resources necessary to meet this greater workload.

In August 2001, VA proposed to amend the Board's regulations to enable the Board to perform record development itself and make a decision on that evidence rather than remand the case to the agency of original jurisdiction for these purposes. For several reasons related to unfairness and inefficiency, the DAV urged VA not to issue a final rule to authorize this practice. We also noted that such a rule would be unlawful because it would deprive claimants of the statutory right to have a decision by VA and one administrative appeal from that decision. The DAV proposed an alternative in which a special unit of VBA personnel in Washington could perform the remand development and make a new decision on the additional evidence. This would be a shortcut to avoid the delay of a remand to the regional office. The goal of speeding up the process could be accomplished without any denial of due process for the claimant. VA brushed aside our objections and recommendations and issued a final rule for this purpose in January 2002. To handle this work, BVA created its Evidence Development Unit, which began operations in February 2002. The DAV, joined by three other organizations, challenged this rule in the United States Court of Appeals for the Federal Circuit. In its May 1, 2003, decision, the Federal Circuit invalidated the rule as unlawful. As a result, VA created a special VBA unit, the AMC, to perform remand functions.

The AMC develops and decides approximately 96 percent of the BVA remands. The issues involved in the other 4 percent are more appropriately handled by the field offices. Although the average time a case was in remand status during FY 2004 was 22 months because a portion of the cases were old ones remanded to field offices, the portion of the remanded cases that were developed and decided by the AMC were on remand an average of approximately 203 days. As of April 23, 2005, the average days a case is on remand before the AMC had more than doubled, to 412.6 days. The AMC currently completes work on an average of 231 cases a week, and 20,970 cases were assigned to AMC as of April 25, 2005.

This backlog resulted from the bulk transfer of approximately 9,000 cases from the Board to the AMC in the first quarter of FY 2004. These were cases in which further development was pending at the Board. Of course, the AMC had both the responsibility to develop and adjudicate these cases. In the beginning when the AMC was first organized, it had to cope with new processes and adjudicators, and it was understandably not up to full efficiency. As a consequence, cases began to back up.

Because the volume of work at the AMC was higher than expected, VBA developed a plan in December 2004 to have three VA regional offices do a portion of the remands. These offices are located in Huntington, West Virginia; St. Petersburg, Florida; and Cleveland, Ohio. Initially, the plan was that cases already developed and ready to adjudicate would go to the Huntington and St. Petersburg offices. Huntington was expected to adjudicate and authorize awards for 300 cases per month. St. Petersburg was expected to adjudicate and authorize 500 cases per month. Cleveland was expected to develop, adjudicate, and authorize 600 cases per month. The Huntington and St. Petersburg offices found that some of the cases they received from the AMC were not actually ready to adjudicate. These offices began to undertake development also. The AMC currently sends 1,300 cases a month to the AMC teams at the three regional offices.

Our DAV representatives at BVA observed that some of the earlier cases returned to the Board from the AMC were not developed in compliance with the remand orders. However, with AMC

employees gaining experience, the quality of development has improved. The AMC is viewed as an improvement over the prior procedure in which all cases were remanded to agencies of original jurisdiction because cases are more strictly controlled and not left to languish in field offices for years, as too often happened before. Our representatives at the AMC also report that AMC adjudicators are granting the benefits sought in many of these appeals.

When the BVA allows an appeal, it returns the case to the AMC rather than the agency of original jurisdiction to effectuate the award of benefits. The case often must go to the AMC because the appeal also involves a remanded issue. A major complaint is that the AMC delays the award of benefits on the allowed portion of the appeal for an average of 90 days. Even where the case involves no remanded issue, the case is sent from BVA to the AMC for the award of benefits, and this results in unnecessary delay. In instances where an allowed appeal involves no separate remanded issue, the case should be returned to the agency of original jurisdiction for a prompt award. Many of these claims have been pending for years.

Currently, VBA has 134 FTE devoted to the AMC and its three outstations. The AMC has 87 FTE. St. Petersburg has 25 FTE, Huntington has 8 FTE, and Cleveland has 14 FTE devoted to their AMC Resource Units. If the BVA remand rate remains at or near 50 percent of its dispositions, it is projected that VBA will need to increase its staffing for this activity to 145-150 FTE in FY 2006.

The foregoing information suggests that VBA still reactively expends too much of its resources fighting brushfires and not enough on fire prevention. When the effects of a bottleneck become a public embarrassment, VBA creates a 'Tiger Team' or 'brokers' work from the overloaded activity to another station. This may serve to cosmetically level out the mountains, but it does not appear to substantively reduce the total volume of work across the system. When VBA does push to reduce the backlog in the short term, it increases work in the long term by compromising quality. This necessitates more rework and triggers more appeals, which overloads the system even more, and causes a further decline in timeliness. The timeliness and propriety of actions on appeals by agencies of original jurisdiction in preparing the case for BVA review and in completing remand actions after BVA review account for much of the overall appellate processing time and necessity to rework the case. The available data show the error rates in appealed cases are high and that the process takes an inexcusably long time, thereby delaying disability and other benefits for many veterans with meritorious claims and immediate needs. The problem of appeals languishing in regional offices for years is not a new one. The responsible VBA officials need to take more decisive action to correct this problem. Board officials need to take the necessary steps to reduce error rates in BVA decisions and to ensure binding court mandates are carried out. With recent increases in the appellate caseloads and no corresponding increase in staffing, timeliness at BVA and the AMC is likely to suffer even more. Congress needs to address BVA staffing more seriously.

We appreciate the Subcommittee's interest in these issues, and we appreciate the opportunity to provide you with the DAV's views. We hope our views will be helpful to the Committee.