

Testimony

of



Presented by

Rick Weidman
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Before the

House Committee on Veterans' Affairs
Subcommittee on Disability Assistance and Memorial Affairs

Regarding

Update on VA Contracted Exams, Quality Review Process,
And Service to Rural Veterans

September 19, 2019

Good afternoon Chairwoman Luria, Acting Ranking Member Bost, and other Representatives of this distinguished subcommittee. On behalf of the VVA National President, as well as the members of Vietnam Veterans of America (VVA), I thank you for affording VVA the opportunity to testify today regarding the Department of Veterans' Affairs (VA) contracted Compensation and Pension examinations (hereafter "exams").

VA Compensation and Pension Exams are an often-necessary step in a veteran's disability compensation claim. Obtaining a timely and accurate exam helps to ensure that the claim is correctly decided the first time. This prevents veterans from entering an often multi-year long appeal process to obtain a final and just decision. Given that the VHA has more than 50,000 clinical vacancies, VA simply lacks the capacity and person-power to conduct all necessary exams in-house. As such, VVA supports VA's efforts to utilize contractors as an option to help veterans obtain timely and quality exams for disability compensation purposes.

Nevertheless, VA may delegate authority, but VA may not delegate responsibility. VA must still be held accountable for ensuring that all aspects of the exam process handled by contractors are conducted with the highest level of quality, accuracy, and transparency. Veterans should not be bullied or threatened into attending an exam they simply cannot make. Veterans should not be penalized for not attending an exam that they just learned about the day before. And veterans should not be forced to appeal an erroneous denied claim due to the examiner's incompetence, failure to review the veteran's medical records, or inability to complete the form.

Under the Appeals Modernization Act, there is an often unspoken but ever-present emphasis on speed at the expense of quality. This emphasis on speed has permeated the contract exam world in all aspects of the exam process—from scheduling an exam to the exam itself. At the end of the day, a focus on speed with little emphasis on accuracy and quality only hurts veterans.

The average age of a Vietnam veteran today is 73 years old. Pursuant to the *Blue Water Navy Vietnam Veterans Act of 2019* (hereafter "BWN Act"), countless more veterans and family members will be entitled to disability compensation benefits due to them under the law. As early as October 2019, VA has assured us that exams will be scheduled for veterans who are entitled to benefits under the BWN Act.

The issues surrounding scheduling exams disproportionately impacts older veterans who need to arrange for transportation to and from the testing site, homeless veterans who have limited phone access, incarcerated veterans, and veterans who live in rural areas who must travel long distances to get to and from an exam site. VVA urges VA to swiftly prioritize the issues outlined in this testimony, especially in light of the increase in exam requests likely to occur for Vietnam-era veterans.

I. Inadequate Advanced Notice of Scheduled Exams and Contractors Pressuring Veterans to Not Reschedule or Told Their Claim Will Be Denied.

Contractors often do not give veterans sufficient advanced notice to attend the exam. If the veteran does not attend the exam, it is common for the contractor to report to VBA that the veteran was a “no show” and the claim is often automatically denied. In one instance, for example, the veteran was notified of a 9/18/2019 scheduled exam in a letter dated 9/10/2019. By the time the veteran gets the letter, he will only have a couple of days to arrange his schedule to attend this exam. This is the norm. A couple of days advanced notice is often insufficient for veterans that need to arrange for transportation or request a day off from work.

VVA also knows of cases where veterans were being pressured to not reschedule their exam by contractors or being told that if they do not choose the alternative appointment time given, VA will deny the claim. This is unacceptable, especially for veterans that may need to have several weeks advanced notice to be able to coordinate transportation to and from the exam site.

The pressure from contractors to schedule these exams expeditiously is troubling. Veterans should be given sufficient advanced notice of scheduled exams, and when they call to reschedule, they should be given options to schedule it at a time that is convenient for them and without fear of retribution. What timeliness requirements are set by VBA to the contractors where the contractors feel the need to pressure and bully veterans into attending exams that they are unable to attend?

II. Communication Issues Between Contractors and Veterans, and Between the Contractors and VBA.

Communication between veterans and the contract exam agencies can be improved, as well as between the contractors and VBA. An egregious communication issue happened recently when a 96-year-old World War II veteran who lives in an assisted living facility was not notified that his exam had been cancelled by the contractor. In this case, the World War II veteran was required to coordinate transportation to and from the testing site, and when the veteran arrived at the exam site, the doctor was not there. It was not until our accredited service officer inquired with VA as to why the exam did not happen that the veteran found out that the exam had been cancelled. No one bothered to notify the veteran in advance of his exam that it had been cancelled.

In another example, VVA recently observed a veteran being scheduled for two exams on the same day by the same contractor, but at different testing facilities with less than 3 hours between scheduled exams. Depending on how long the first exam lasts, it may be physically impossible for the veteran to attend both scheduled exams on the same day. VVA also knows of a recent case where the veteran notified the contractor that she was unable to attend the scheduled exam, and the contractor notified VBA that the exam was “unable to be scheduled.” In response, VBA issued a decision that denied the claims, citing that the veteran failed to show up for the scheduled exam. This is wrong.

Notwithstanding the example scheduling issues detailed above, VVA strongly urges VA to prioritize increasing communication and information to the veteran in the following ways:

- 1. VVA recommends that all exam requests and exam notifications sent to the veteran by the contractor be timely uploaded to VBMS.** Exam notification letters, in particular, are not always uploaded to VBMS. This would be helpful for veteran service representatives to help ensure that veterans are able to attend scheduled exams, and if not, to help the veteran reschedule the exam. If the exam notification letter is not included in VBMS, the veteran service representative will have no way of knowing when an exam is scheduled. Requiring this information be uploaded in VBMS will also increase transparency and accountability on the part of the contractors.

2. **VVA recommends that all exam notification letters to the veteran clearly state that it is possible to reschedule the exam and how to do so.** For example, VES's letter does not state anywhere on the letter that it is possible to reschedule or how to reschedule the appointment. This is problematic. As another example, LHI's letter indicates the following: "To reschedule this appointment, contact LHI at least one business day prior to your scheduled appointment to determine if you are eligible." Although it is helpful for the letter to indicate that it is possible to reschedule the exam, by stating "to determine if you are eligible" indicates that it may not be possible to reschedule the exam and may deter a veteran from calling. Often the veteran is notified only a couple of days prior to the scheduled exam and it is not uncommon for the veteran to need to reschedule due to the short-notice.
3. **VVA recommends that all contractors are trained to speak with an accredited service representative on behalf of a veteran as is done when accredited service representatives interact with VBA employees.** VVA service representatives report that contractors refuse to speak with them regarding a veteran we represent. As such, service representatives are unable to assist a veteran in rescheduling an exam with the contractor.
4. **VVA recommends that all exam requests generated by VBA contain a date of request on the form to increase accountability and transparency.** Although there is the date in VBMS when the form was allegedly uploaded, the exam request form itself does not have a date on it as to when it was generated and sent over to the contractor. Because the VBMS date can easily be changed or inaccurate, VVA recommends the date of the request to be added to the exam request form itself.

III. Exam Quality Is Lacking.

In addition to implementing policies and procedures to ensure that the veteran will be able to attend the exam, it is also important to ensure that the exam itself is of sufficient quality to render an accurate decision for the veteran. The October 2018 GAO report indicated that VBA did not verify if examiners completed the training, nor did VBA collect any information to assess the training effectiveness in preparing examiners. VVA is eager to learn whether VBA has indeed developed a robust training program that has been tested for effectiveness. And if so, what are the results? VVA believes that a quality assurance program that is not publicly

available for review, including the specific metrics used, makes it as if the program does not exist at all.

VVA also strongly urges this subcommittee to dive deeper into the quality score and metrics being reported by VBA and to not be satisfied with a simple number. What exact metrics are being developed to determine if an exam is accurate? What feedback loops and training is conducted when quality scores are not of a certain standard? Have the quality and performance data been used to identify and implement program-wide changes? How can we have a quality score of 92%, but still see a large number of appeals based upon an inadequate exam? Too often has VVA seen “accuracy” scores produced by VBA as a way to appease Congress in not questioning the sudden and dramatic increased pace by which claims are being adjudicated.

VVA understands that it is not an easy task to produce an adequate and thorough exam for compensation purposes. This is an area where continual training, monitoring, and feedback to the examiners must be an integral part of the quality control process to ensure that exams meet the legal minimum standards. The quality of exams can always be improved—it is just a matter of determining *what* aspect of the exams VA wishes to improve in any given moment. A static number reporting “accuracy” is insufficient and helps no one.

In addition to developing a robust and dynamic quality assurance program for exam contractors, VVA also urges VA to implement a competency-based test for all VA employees that touch a disability benefits claim—contract examiners, VHA examiners, raters, coaches, VA managers, and even veteran service representatives and private attorneys. VA benefits disability law is a specialized field that requires particularized knowledge and competencies. For contract examiners in particular, if VA is confident in its training effectiveness, it should not have a problem with implementing a test to ensure its contractors are equipped to issue adequate and comprehensive exams.

Unfortunately, it is still common to hear about cases when veterans’ claims files are not being reviewed by the examiner, or the examiner does not have adequate time to examine the veteran during the scheduled exam. Veterans also report that during the exam, it appears as if the examiner did not review anything in the claims file prior to the exam. An exam that is riddled with errors and that does not accurately and comprehensively assess a veteran’s disability for compensation

purposes is a waste of time, waste of money, and is ultimately a disservice to our veterans. We can do better than that.

CONCLUSION

VVA is supportive of the use of contract exams in theory. However, the push by VA for the contractors to meet certain timeliness objectives results in not delivering the necessary resources and support to veterans as well as compromising on the quality of exams. Veterans should be given more advanced notice of scheduled exams and the ability to reschedule an appointment if necessary. Veterans should not be bullied into attending an exam out of fear that their claims will be denied, and veterans should be provided clear instructions as to how to reschedule an exam.

Consideration into the needs of older veterans, such as sufficient time to arrange for transportation to and from an exam site and scheduling challenges for veterans with limited phone use is strongly encouraged. Homeless veterans and incarcerated veterans should not be penalized and prevented from obtaining an adequate exam.

Finally, quality should not be an afterthought. Timeliness at the expense of quality is not a win for veterans as an inadequate exam will just result in a multi-year appeal battle to obtain benefits that the veteran is entitled to under the law. VVA calls upon VA to require competency-based testing for all individuals that touch a benefits claims file, including contract examiners. Additionally, VVA urges VA to develop a dynamic quality assurance program that does not focus on a static “accuracy” number, but rather, focuses on continually identifying and implementing ways to improve the overall quality of exams.

On behalf of our membership, I ask that you enter our full statement for the record and we thank you for the opportunity to testify and I will be honored to answer any questions the subcommittee may have regarding our testimony presented before you today.

VIETNAM VETERANS OF AMERICA
Funding Statement
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The national organization Vietnam Veterans of America (VVA) is a non-profit veterans' membership organization registered as a 501(c) (19) with the Internal Revenue Service. VVA is also appropriately registered with the Secretary of the Senate and the Clerk of the House of Representatives in compliance with the Lobbying Disclosure Act of 1995.

VVA is not currently in receipt of any federal grant or contract, other than the routine allocation of office space and associated resources in VA Regional Offices for outreach and direct services through its Veterans Benefits Program (Service Representatives). This is also true of the previous two fiscal years.

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RICK WEIDMAN

Richard F. “Rick” Weidman serves as Executive Director for Policy & Government Affairs on the National Staff of Vietnam Veterans of America (VVA). As such, he is the primary spokesperson for VVA in Washington. He served as a 1-A-O Army Medical Corpsman during the Vietnam War, including service with Company C, 23rd Med, AMERICAL Division, located in I Corps of Vietnam in 1969.

Mr. Weidman was part of the staff of VVA from 1979 to 1987, and from 1998 to the present, serving variously as Membership Services Director, Agency Liaison, Director of Government Relations, and now Executive Director for Policy & Government Affairs. He left VVA to serve in the Administration of Governor Mario M. Cuomo (NY) as statewide director of veterans’ employment & training (State Veterans Programs Administrator) for the New York State Department of Labor from 1987 to 1995.

Rick has served as Consultant on Legislative Affairs to the National Coalition for Homeless Veterans (NCHV), and served at various times on the VA Readjustment Advisory Committee, as a consumer liaison on the Secretary’s Advisory Committee on Serious Mental Illness at VA, the Secretary of Labor’s Advisory Committee on Veterans Employment & Training, the President’s Committee on Employment of Persons with Disabilities - Subcommittee on Disabled Veterans, Advisory Committee on veterans’ entrepreneurship at the Small Business Administration, and numerous other advocacy posts in veteran affairs. Weidman has been honored with awards for his work in veterans’ employment at the local, state and national levels many times over the last forty years. He is currently Chairman of the Veterans Entrepreneurship Task Force (VET-Force), which is the consortium of most of the major veterans’ service organizations and military service organizations regarding expanding opportunities for veterans, particularly disabled veterans to create, own, and successfully operate their own small business.

Mr. Weidman was an instructor and administrator at Johnson State College (Vermont) in the 1970s, where he was also active in community and veterans affairs. He attended Colgate University (B.A., 1967), and did graduate studies at the University of Vermont.

He is married and has four children.