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## Appeals Process for Disability Claims Equals Long Wait Time for Veterans: A Policy Analysis and Call for Advocacy to Change the Veterans Benefits Administration Compensation and Pension Process

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### Abstract

Policymakers, advocate groups, and national leaders express concerns about the timeliness and quality of the Compensation and Pension (C&P) claims adjudication system. This C & P system is defined as the overarching process the Veterans Benefits Administration uses to review and to adjudicate a veteran's claim for a service-connected disability. Yet, for decades, nothing has changed. For this policy analysis, the author presents a historical summary of the appeals process, a summary of delays, outlines some innovative change efforts, uses a policy scenario to highlight the impact on veterans, and concludes with a call for advocacy to veterans studies scholars.

*Keywords:* veterans, benefits, appeals process, adjudicate, service-connected

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### Introduction

Military service is difficult and demanding and the transition to civilian life also poses unique challenges for the men and women who have served in the U.S. armed forces. Some veterans are left hampered by the effects of disabilities, diseases, or injuries incurred or aggravated during their career in the military. To help mitigate these health issues encountered by veterans, the United States Department of Veterans Affairs (VA) offers a variety of services and benefits to veterans and their families. Since 1988, the VA serves as a member of the President's cabinet-level executive departments, and is comprised The Veterans Health Administration (VHA), the Veterans Benefits Administration (VBA), and the National Cemetery Administration (NCA). These administrations provide health care, benefits, and internment services, respectively, to former members of the uniformed services of the United States of America (U.S. Department of Veteran Affairs, 2015).

The VBA in particular, offers a host of benefits to veterans that historically include the home loan guarantee program, the vocational rehabilitation and employment program, insurance programs, and various disability, survivor, and dependent benefit programs. As one example of VBA's services, compensation, also known as a service-connected disability, is a disability benefit that provides monthly compensation payments and health care to veterans who have sustained an injury or illness while in the military. The VBA has provided this disability benefit to veterans since 1636 when the Pilgrims of Plymouth Colony passed a law pledging support for disabled veterans (U.S. Department of Veteran Affairs, 2015). However, the issue for many modern-day veterans is their wait time for a determination from the VBA. VBA correspondence can average between several months to years for a service-connected disability claim.

Beginning in the early 1990's, policymakers, veteran advocate groups, and national VA leadership expressed concerns about the timeliness and quality of the Compensation and Pension (C&P) claims adjudication system. (U.S. Government Accountability Office, 1994). This C & P system is defined as the overarching process the VBA uses to review and to adjudicate a veteran's claim for a service-connected disability. This process typically begins when a veteran files paperwork

with the VBA documenting that an injury or illness was either caused or aggravated by their military service. The VBA reviews the claim, examines the history and evidence collected as part of the C & P process, makes a determination, and informs the veteran of their rights to appeal the VBA's decision. The Government Accountability Office (GAO) (1994) reported that over one-third of the applicants for disability benefits were dissatisfied with VBA's processing of their claims. The most common complaint by veterans who used the C & P system for a disability claim was a lack of timeliness in receiving a decision.

In order to examine and to contextualize the impact of the C & P system as a policy that impacts veterans individually and the VBA organizationally, the author examines the historical background and current efforts to improve the system. Therefore, for this policy analysis the author presents a summary of the appeals process, a summary of delays, outlines some innovative change efforts aimed at reducing long wait times, and concludes with an analysis of the feasibility of an encouraging approach to systematically address and resolve the appeals backlog, the Fully Developed Appeal.

## Background

### *The Appeals Process for Veteran's Disability Claims*

The Board of Veteran Appeals website provides a synopsis of the appeals process that a veteran currently encounters (U.S. Department of Veterans Affairs Board of Veterans' Appeals, 2015). The appeals process begins when a veteran disagrees with a VBA decision regarding a service-connected disability claim. As noted earlier, veterans are informed of their right to appeal the decision when they receive the determination, which is typically received as a written letter with an overview of the appeals process included as an additional document. The paperwork instructs the veteran that they have a right to an appeal, which starts when they submit an official written Notice of Disagreement to the local VBA regional office handling their claim. A Notice of Disagreement is a written document that a veteran uses to express disagreement with a decision on a claim.

Once the notice is filed, the VBA reviews the claim and provides a written explanation if the appeal is denied. If the veteran submits additional evidence, VBA reviews the claim again. If the new evidence does not result in a grant of all appealed issues, the VBA will provide another written explanation of the decision. At this point, the veteran may appeal to the Board of Veterans' Appeals (Board) if they do not agree with the local VBA decision. The Board serves as an impartial third-party decision maker. Members of the Board, who are attorneys experienced in veterans law and in reviewing claim benefits, are the only ones who can issue Board decisions. Staff attorneys, also trained in veterans' law, review the facts of each appeal and assist the Board members (Board of Veterans' Appeals, 38 U.S.C. §§ 7101, 1994). Board members are appointed by the Secretary of the Department of Veteran Affairs, with the approval of the President of the United States. The Chairman of the Board is appointed to a six-year term by the President of the United States, and confirmed by the United States Senate.

Prior to the appeal being transferred to the Board, the local VBA regional office again reviews the claim and provides certification that the appeal is ready for review by the Board. After the appeal has been certified, the Board conducts a hearing at the veteran's request. Potential outcomes from the Board's hearing include the granting of benefits, denying the appeal, or returning the claim to the local VBA to obtain additional evidence necessary to render a decision on the claim. If the veteran appeals the Board's decision to deny the claim, they may appeal to the U.S. Court of Appeals for Veteran Claims. While seemingly straightforward, the appeals process is a multifaceted set of official procedures with many administrative layers that are coordinated, yet reside in varying geographic locations within the organizational structure and hierarchy of VBA. As such, the complexity of this

process lends itself to lengthy processing times which can occur at multiple stages as the claim is routed through this appeals process

#### *Delays in the Appeals Process for Veteran's Disability Claims*

A key indicator of the VBA's performance in claims and appeals processing is timeliness. Today, and historically, veterans who file a Notice of Disagreement wait a tremendous amount of time for a determination. A summary report from the VA Office of the Inspector General (1997) found that in 1996, a veteran who appealed a claim, would wait an average of 1,146 days for a determination. Since then, wait times in the appellate process have changed very little. The Government Accountability Office (GAO) (U.S. Government Accountability Office, 2013) reported that in Fiscal Year 2012, the average time for a veteran waiting on a determination was 1,040 days. Two years later, VBA reported that the wait time was 1,038 days (U.S. Department of Veterans Affairs Board of Veterans' Appeals, 2014). Over the past several decades, bottlenecks in the appeals process have been identified by audits conducted by the Government Accountability Office and VA Office of the Inspector General (VA OIG). Specifically, a VA OIG report (1997) identified two key areas, that at the judicial review process and delays at the regional office level have had a significant impact on timeliness in making a determination on a veteran's claim.

#### *Addition of a Judicial Review Process*

Prior to the establishment of Court of Veteran Appeals in 1988, the Board of Veterans Appeal's decisions concerning disagreements were not subject to judicial review. The Veteran Judicial Review Act of 1988, and subsequent creation of the Court of Veteran Appeals, profoundly affected workload and timeliness (VA OIG, 1997). Clearly, the inclusion of an additional level of judicial review in the claims process would understandably lengthen the time for some appeals. The changes precipitated by the creation of the Court of Veteran Appeals have benefited many veterans who did not have an additional avenue to resolve their disagreement regarding their claim. However, as mentioned earlier, the additional protection of judicial review has resulted in a cost of even more waiting time for veterans.

Within ten years of the establishment of the Court, both the VA OIG and the GAO identified unintended negative consequences that resulted from the addition of judicial review. Although the Court has given judicial review and due process to veterans, the VA OIG (1997) found that delays in claims processing throughout the system stemmed from precedent setting decisions made by the Court through the appeals process. The report suggested that the expanded due process requirements of the Court impacted the entire claims process, making it more complicated and time consuming. A 1995 GAO report echoed similar findings. For example, legislation and the Court's decisions had forced the integration of new adjudication responsibilities into an already unwieldy adjudication process. Furthermore, between 1991 and 1995, the number of appeals awaiting Board of Veterans Appeals' action had increased by over 175 percent and the average processing time has increased by over 50 percent. The persistent nature of a lack of timeliness cannot be solely attributed to the implementation of judicial review. Another barrier to the process was the complex routes for processing appeals at local VBA regional offices which also contributed heavily to the delay that some veterans experience.

#### **Delays at the Local VBA Regional Office**

Processing issues at the VBA regional office level have proven to be an obstacle for timely claims adjudication. For example, the number of Notices of Disagreement, the first step in the appeals process, received by VBA remained relatively consistent between 2009 and 2012, however the number of veterans with a "pending a decision" status grew 76 percent over that same time period

(U.S. Government Accountability Office, 2013). Additionally, the number of Statements of the Case, an explanation of VBA's decision on a veteran's claim mailed by VBA to veterans, decreased 24 percent over the last decreased over the same time period. Additionally, the time it took to mail a Statement of the Case increased 57 percent from 293 days to 460 days on average. (U.S. Government Accountability Office, 2013). These, and a number of other factors, have contributed to an increase in the processing time at this local level.

Considering the past fifteen years of conflict the U.S. armed forces have contended with, the number of veterans seeking VA benefits has also increased. The nature of many of the claims the VBA has received are extremely complex. Many veterans have sustained disabilities related to combat and deployments overseas. For instance, illnesses resulting from environmental exposures, infectious disease risks associated with compound injuries, and traumatic brain injuries can have long-lasting implications for veterans (U.S. Government Accountability Office, 2010). A lack of dedicated personnel is another major contributor to the lack of timeliness in processing appeals at the local level. For example, all staff assigned to the appeals team at one VBA regional office focused exclusively on rating new disability claims for a nine-month period in 2010 instead of processing appeals (U.S. Government Accountability Office, 2011). A 2012 VA OIG report found similar trends within and across the VBA. In another investigation related to staffing patterns, the VA OIG found that VBA regional office managers did not assign enough staff to process appeals, diverted staff from processing appeals, and did not ensure that appeals staff acted on appeals promptly because, in part, they were assigned responsibilities to process initial claims, which were given higher priority. Several attempts at the congressional level have been made to address the aforementioned workload and staffing issues, yet a major change has not taken hold.

#### **A Recent History of the Change Effort**

The multifaceted nature of the claims appellate process elicited several different perspectives on legislative and policy approaches to rectify the issues with timeliness that leads to the backlog of claims. A recent example is H.R. 2189: To improve the processing of disability claims. Introduced in the U.S. House of Representatives by Representative Jeff Miller on May 23, 2013, the bill proposed the establishment of a task force within VBA to study the process used to evaluate claims and appeals (Claims Processing Improvement Act, 2013). H.R. 2189 passed the House in 2013, but was not passed in the Senate. Yet, in the media and in congressional reporting, both Congressional chambers are credited with weighing in on the topic of long wait times for veterans in the claims adjudication process (Klimas, 2014; Blumenthal, 2016).

In 2014, United States Senator Dean Heller introduced S. 2091: 21st Century Veterans Benefits Delivery Act during the 113th Congress; however, the legislation was never enacted (21st Century Veterans Benefits Delivery Act, 2014). In 2015, Senator Heller reintroduced the bill as S. 1203: 21st Century Veterans Benefits Delivery and Other Improvements Act during the current 114<sup>th</sup> session of Congress. A key point to his proposed program outlined in the bill was the requirement for the leadership of the VBA local regional office claim decisions departments to explain the benefits of the requirement that veterans have to file their appeals within 180 days of the initial claims determination (21<sup>st</sup> Century Veterans Benefits Delivery and Other Improvements Act, 2015). This bill passed in the Senate on November 10, 2015 and is currently in the House for consideration. Senator Heller's bill is not the only legislation aimed at establishing stricter time tables for processing; other bills also support accountability changes to the appeals processing system.

Senator Bernie Sanders offered an alternative plan to address the issue of timeliness with veterans' appeals with S. 928: Claims Processing Improvement Act of 2013. He proposed a significant change to the appeals process in his bill. Specifically, his bill outlined that the target for

implementation was the filing period between a Notice of Disagreement, to a decision on a claim, to when an appellate review is initiated. In his bill, the gap was reduced from one year to 180 days (Claims Processing Improvement Act, 2013). Although his bill was not enacted, the proposal would have eliminated six months from the time that the appellate review would normally be initiated under the current policy at that time. While Senator Sanders, Senator Heller, Representative Miller, and many others have moved the change effort forward at the Congressional level, other policy changes could provide much needed relief to the VBA's ongoing struggle with timeliness in claims processing.

In order to mitigate the long wait times, United States Representative Beto O'Rourke introduced federal legislation in February 2015 that would provide veterans with an opportunity to utilize this alternate route for filing appeals. The specific policy is H.R. 800: Express Appeals Act. This bill would authorize the Secretary of Veterans Affairs to carry out a five-year pilot program that would create an alternate appeals option for veteran appellants based on the fully developed model. It would provide veterans with an option to have their appeals sent directly to the Board of Veterans' Appeals, which in turn would bypass some VBA appeal processing procedures. However, this initiative has met a similar fate to other proposed legislation aimed at reducing wait times for veterans. As of October 2016, 18 months after introduction, H.R. 800 is stuck in committee.

#### **A Proposed Policy Change**

As an alternative to the traditional appeals process that moves a claim from the local VBA to the Board of Veterans Appeals to the Court of Veteran Appeals, the U.S. Department of Veteran Affairs (2013), instead developed a new initiative aimed at reducing the backlog of initial claims. The Fully Developed Claims (FDC) program is an optional initiative that offers Veterans and survivors faster decisions from VA on all new compensation, pension, and survivor benefit claims. Veterans and survivors simply submit all relevant records in their possession (most of these records are easily obtainable, such as private medical records), at the time they make their claim, and certify that they have no further evidence to submit. VA can then review and process the new claim more quickly because their certification indicates that no other evidence exists and that the veteran is willingly choosing to pursue this alternative program.

This innovative approach to transfer what is working for new claims processing to appeals is garnering attention. In August of 2016, Senator Richard Blumenthal introduced legislation that builds on the success experienced in reducing the backlog of initial claims. The rationale for supporting S.3328 - Department of Veterans Affairs Appeals Modernization Act of 2016 is that the legislation would give veterans clear options after they select the FDA approach by consolidating the current appeals process into three distinct tracks. A summary of the tracks is as follows:

*Local Higher Level Review:* This lane would provide the opportunity for a quick resolution of the claim by a higher-level adjudicator at the VA Regional Office. This lane would be a good option for veterans who are confident they have all the evidence necessary to win their claim.

*New Evidence:* This lane would be for submitting new evidence at the VA Regional Office. This lane would serve as a good option for veterans who believe that they can succeed on their claim by providing additional evidence.

*Board Review:* In this last lane, intermediate steps currently required by statute to receive Board review would be eliminated. Furthermore, hearing and non-hearing options at the Board would be handled on separate dockets so these distinctly different types of work can be better managed (Blumenthal, 2016)

S.3328 is an example of a favorable resolution to long wait times due to the simplification of the process into three choices to consider in preparing to file for an appeal for many veterans.

### *Current Status of the Proposed Policy Change & Supporters of the Changes*

At present, several veteran advocacy and veteran-service organizations are actively pursuing the resolution of the issue of backlogged appeals on behalf of their veteran constituents. For example, The Department of Veterans Affairs Appeals Modernization Act of 2016 is supported by the Disabled American Veterans, the American Legion, the Veterans of Foreign Wars, the Paralyzed Veterans of America, AMVETS, the Military Officers Association of America, the National Association of County Veterans Service Officers, and the National Association of State Directors of Veterans Affairs (Blumenthal, 2016). As policy drivers to a variety of veterans' issues, DAV, AMVETS, Paralyzed Veterans of America, and VFW also provide budget recommendations to the Department of Veterans Affairs and Congress through a collaborative document called the Independent Budget. In this Independent Budget, these organizations have collectively identified fixing the VBA claims processing and appeals systems as a critical issue needing resolution in the 114th Congress (American Veterans, et al., 2015). Again, time will tell if there is sufficient political will to enact congressional legislation to implement this innovative change effort that has the potential to resolve backlogged service-connected disability claims for veterans.

### **Implications for Veterans Studies Scholarship**

#### *A Top-down Approach for Policy Implementation*

Arguably, one of the most important aspects for veteran scholars to understand about effecting change for the veteran community is that implementing program level policy in the VA requires congressional action. The authority for approving organizational change falls to the both chambers of Congress. The Secretary for the Department of Veteran Affairs must confer with Congress on all changes and subsequent approved matters that require submission of a plan, justification, or notification to Congress (Authority to Reorganize Offices, 1991) and follow applicable appropriations laws when funding new programs. In essence, a bill has to become a law.

In this, a top down approach, policy makers can institute legislation to change the VA system or streamline the appeals process with VBA. However, an alternative to legislative action is possible and often used. An alternative is when lawmakers exercise their constitutional role of oversight over the Executive Branch by asking the Government Accountability Office (GAO) to conduct an audit or investigation of a federal program. A GAO audit typically requires the Secretary of the VA and top leadership in the Veteran Benefit administration to examine the audited program, provide a response to the GAO audit, and at times, make improvements internally. Additionally, a similar example of applying this organizational pressure is through calls to the President for a day of action (e.g., Veterans Day) on Capitol Hill to change policies. As a result of this type of Capitol Hill advocacy, the President may issue an Executive Order that directs the federal government to respond. For example, Executive Order 13625 (2012) directed the VA and Department of Defense (DOD) to improve the mental health of servicemembers, veterans, and their families.

In response to the Executive Order, VA increased its mental health staffing, expanded the capacity of the Veterans Crisis Line and enhanced its partnerships with community mental health providers. The DoD and VA worked to increase suicide prevention awareness and the DoD, VA, and the National Institute of Health jointly developed the National Research Action Plan on military and veteran's mental health to better coordinate federal research efforts. (DoD & VA, 2012). Other outcomes of advocacy on the Hill are that congressional members and their staffers may be more informed of an issue, lobbied for support on a bill, or outline changes in current legislation or other

bills to attach the issue to. Understanding how change is made in the VA structure is crucial to veteran scholars with regard to facilitating meaningful change for the veteran community. However, perhaps more importantly, veteran scholars should become aware of the access points they have to these political avenues of change.

### *Veterans Studies Scholars*

As veteran scholars in academia, our job is to produce and to disseminate knowledge. As such, we have a variety of scholarly tools and resources that can be effectively used for advocacy and change. The issue of extremely long wait times for veterans for a determination of an appeal is persistent problem without a viable solution that has been relatively unchanged for the past two decades. As one example, we can conduct policy level research and publish our findings. Veteran studies scholars can examine the effectiveness of VA policies, those approved and those proposed, and recommend scientifically valid approaches to change implementation of the policy or the policy itself.

In order to bolster political will, veteran studies scholars can also engage in social science research that expands a decision makers understanding regarding the impact of the current appeals process on veterans. For example, qualitative research aimed at collecting veteran stories, testimonials, and life experiences struggling with the VBA appeals process and the resulting impact of these struggles with VBA policies on their health, quality of life, level of poverty, can provide insight into the plight of 450,000 veterans awaiting appeals (Blumenthal, 2016).

Veteran studies scholars can also write research briefs that appeal to Congressional member with a presentation of scientific findings on both sides of an issue and make recommendations for change that are scientifically and methodologically sound. These research briefs can be shared with health staffers and veteran advocates to raise bipartisan support for bills that can radically change the VA.

Additionally, veteran studies scholars can present their research and educate community members on the current appeals process and encourage citizens to hold their elected officials accountable to veterans, veterans' issues, and organizational changes needed in the VA. Many community avenues are available in order to disseminate scientific knowledge regarding the appeals process. Veteran studies scholars could actively seek out or respond to the call to serve by agreeing to speak, hosting an exhibit space for a project, or provide a presentation at community meetings and town halls related to veterans' issues. Disabled American Veterans, the American Legion, the Veterans of Foreign Wars, the Paralyzed Veterans of America, and AMVETS work hard to advocate for changes in the VA and Congress at the national level. However, veteran studies scholars can have a great impact with these veteran-serving advocacy organizations more locally. Local posts of the aforementioned veteran advocacy groups often invite and welcome speakers to provide information to their members. This opportunity is optimal for bidirectional exchange of information between veteran studies scholars and veterans to share experiences, knowledge, and encourage advocacy for change with their local congressional members. Additionally, social media, blogs, and traditional news media, such as newspaper op-eds, are powerful tools for veteran studies scholars to engage the community, disseminate knowledge, and draw attention to their research on veterans' issues.

### *A Policy Scenario Illustrating a Life Impacted by the Lagging Appeals Process*

The following policy scenario presented by the author illustrates why the issue of the improving appeals process is salient to veteran scholars and why the issue is in need of their action. After being honorably discharged from her service in the Army, Jane filed her initial claim in

September of 2012 for service-connected disability for medical issues related to injuries to her wrists and knees, and ongoing mental health issues. She was granted a 20% service-connected disability in January of 2013 for her wrists, but was denied disability coverage for her knees and her claims of Post-Traumatic Stress Disorder (PTSD). Her total disability rating is 20 percent.

Jane filled her notice of disagreement in February of 2013 and submitted new medical evidence of her ongoing medical treatment at the local VA to support her claims for her knees and PTSD. She is not eligible for Veterans Pension/Supplemental Income for Wartime Veterans. Veterans Pension/Supplemental Income for Wartime Veterans is a tax-free monetary benefit payable to low-income wartime Veterans to bring their income up to the poverty level (U.S Department of Veteran Affairs, 2015, December). Although she meets the minimum service requirement of serving during wartime, she is not age 65 or older, totally and permanently disabled, a patient in a nursing home receiving skilled nursing care, receiving Social Security Disability Insurance, or receiving Supplemental Security Veterans Pension.

Jane has become homeless in the past year due to her inability to afford rent due to increases by her landlord and has no real financial assets such as real estate, property, or investments. However, Jane has worked at minimum wage (average 20 hours a week at \$7.65 per hour in 2016 and 2015, at \$7.50 per hour in 2014, and at \$7.35 per hour in 2013) in her hometown of Sikeston, Missouri. In 2015, her gross income was \$7,800 and her yearly disability compensation was \$3,158.76. Her total income for 2015 was \$10,958.76 which is below the Federal Poverty Line for individuals. The same can be said for the years 2013, 2014, and will likely continue through 2016. Her plight to rise above the financial constraints she is under is bleak.

For the sake of argument, however, if Jane received a disability rating of 20 percent for her knees, and 10 percent for PTSD, her total disability rating would be 40 percent with a yearly compensation of \$7,048.32 (U.S Department of Veteran Affairs, 2016 November). Her total income, including her gross income from a part time minimum wage job, for the year of 2015 would be then be \$14,848.32. She would be lifted above the federal poverty line. Regardless of the outcome, Jane has been waiting for three years for her claim to be adjudicated and her financial circumstances to change.

### **Conclusion**

The issue of long wait times for veterans in the appeals process has not gone unnoticed. The topic is unusual in that a general bi-partisan consensus exists regarding the need to reduce wait times for veterans, and many efforts from both sides of the aisle in Congress, the Department of Veteran Affairs, and veteran's advocacy groups have incrementally moved the issue forward. However, the complacency that exists related to this change effort highlights the complex nature of policymaking. At a time where nearly all stakeholders agree that the issue needs to be resolved, the development, implementation, and testing of effective policies to address this issue have been decades in the making. Legislation, such as The Department of Veterans Affairs Appeals Modernization Act of 2016, would replace the current appeals process, which today stands at over 450,000 appeals awaiting a decision, has the potential to alleviate some negative consequences of the well intentioned and largely successful historical policies regarding veterans' disability benefits. Without legislative action, the VA, the VBA, and the appeals process for veterans will remain stagnant, and veterans will continue to wait, and wait some more. A call to action is desperately needed or other veterans such as Jane will continue to wait and wait some more for change to occur.

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