



VA Regional Office
PO BOX 1778
COLUMBIA, SC 29202
July 31, 2016

Chairmen, Ranking Members, Members of the US House and Senate Committees of Veterans Affairs and the Secretary, Department of Veterans Affairs

Dear Committee Members and VA Secretary:

AFGE Local 520, the exclusive representative of the bargaining unit of VARO Columbia, SC, wants to address the appeals epidemic, VA awaits election results, and VBA workload continues.

As the debate goes on about the Veterans Health Administration (VHA) regarding the appointment scheduling system and privatization, the Veterans Benefits Administration's inability to serve all Veterans continues to be ignored.

There is no better example of this than the appeals epidemic. We will use excerpts from the article, *The American College of Trial Lawyers Challenges as Unconstitutional Long Delays in Veterans' Appeals for Benefits*, businesswire.com, July 21, 2016, to make the point.

- "IRVINE, Calif.--(Business Wire)--Lawyers, Fellows in the American College of Trial Lawyers, today filed a petition with the United States Court of Appeals for Veterans Claims seeking an order requiring the Department of Veterans Affairs (VA) to eliminate unconstitutional delays in the VA appeals system. Included within its mission, the American College of Trial Lawyers is a leading advocate for improvements in the administration of justice in the United States."

Has the political solution worked?

- ¹ According to Michael W. Smith, president of the American College of Trial Lawyers, "The College recently adopted an initiative to assist our veterans in navigating the process of appealing denials of benefits before the Board of Veterans' Appeals. Our Fellows are highly experienced trial attorneys, and we were shocked by the obstacles and

delays involved in getting through the VA appeals system. The political branches of government have made some attempts to address this issue, **but, for a myriad of reasons, have failed to adequately address the delay in the appeal process.** The College decided that action on its part is the only way to help our veterans get the relief they deserve from this undue burden.” (Emphasis Added)

Here is an example and the gravity of the case:

- “According to the Petition, a veteran whose disability benefits are denied by the VA waits, on average, 1448 days for the Board of Veterans’ Appeals to rule on the veteran’s appeal. **In the meantime, 20 veterans commit suicide in the United States every day. Thousands of veterans die before their appeals are decided.** One of the petitioners, Betty Scyphers, is the 76-year-old widow of an Air Force veteran who died before his appeal could be heard. The VA thus avoided making any payments to Mr. Scyphers and has refused to advance Ms. Scyphers’s appeal in light of her advanced age and failing health. **If she dies before the appeal is decided, her appeal will die too, without any payments ever being made.**” (Emphasis Added)

How long does it take to process an appeal?

- “According to Chandler, “Taking four years to process an appeal is disgraceful. This inexcusable delay violates due process and the Secretary’s statutory duty.”

One of the elements of the “pending fiscal 2017 funding bill” is to enable the “hiring of 242 additional full-time equivalent employees” for the Board of Veterans Appeal according the article, *California veterans face long march in appealing disability benefits, mcclatchydc, July 1, 2016*. According to the numbers below, how will this help with the current appeals epidemic?

- “According to Raber, “The endless delay makes a huge difference because the VA’s error rate is so high. More than 75% of initial decisions that are appealed end up being reversed or remanded. So it’s pretty clear that veterans are being harmed by this process. According to the Board of Veterans’ Appeals own records, only 19% of its decisions in the most recent year affirmed the VA’s initial finding.”

There are **318,660** appeals pending as of the **MMWR dated July 25, 2016** excluding the approximate **146,000** at the BVA. Considering the age of these claims, it should be unacceptable to all (the President, the Congress, the Secretary, service organizations, the media, and other stakeholders) to allow nearly ½ million appeals to sit ignored without any effective plan to address them. If failure of the VHA’s appointment system was exposed and given attention, how can the appeals epidemic be allowed to continue without a viable plan to address it and why must The American College of Trial Lawyers be the ones to take this type of action.

- “Tanis said, “We are asking the Court to require Secretary McDonald to process promptly the individual claims embodied in the petition, and to declare that the delays regarding the approximately 146,000 pending appeals violate the veterans’ due process rights. The petitioners are clearly entitled to a writ of mandamus ordering the VA to

eliminate improper delays. This Court has the power to declare unconstitutional the statutes, regulations, and practices impeding just and speedy appeals.”

Excerpts from the article, *VA lists 12 priorities to better serve veterans*, *The Herald-Dispatch*, July 26, 2016, show where the VA’s focus is. It is surely not the issues at the VBA.

- “HUNTINGTON - Local and national Veterans Affairs officials are hoping initiatives such as appointment scheduling systems and a new model walk-in clinic in Charleston will help the agency rebuild veterans' trust.
- Brian Nimmo, director of the local VA medical center, and Amanda Penn, regional office director for the U.S. Department of Veterans Affairs, were joined by Fred Buchanan, chair of the Veterans Committee for Civic Improvement, for a recent update on what the hospital is doing to connect with the veterans the agency serves.
- Among those updates was a description of the "12 breakthrough priorities" the VA has established as goals for this year. The Department of Veterans Affairs is continuing to work toward improving patient care after the 2014 scandal which found thousands of veterans were not receiving care due to long wait times at VA hospitals, the three officials said.
- The first is to improve veterans' experience.
- A veterans expo is also scheduled for October at the American Legion Post 16 in Huntington. The expo will be a one-stop shop for veterans, including health care, *help with claims*, readjustment counseling and unemployment help.” (Emphasis Added)

There are 12 breakthrough priority goals the VA has established for 2016. There are two that pertain to the VBA – 6. Improve the Comp & Pension Exam and 7. Develop a Simplified Appeals. However, there is no mention of the appeals problem by the Huntington VARO Director. As of the MMWR dated July 25, 2016, the Huntington, WV, VARO has more appeals (2599) pending than disability claims (2,232).

Again, it has already been established that simplifying the appeals process will not address the current appeal epidemic. How is this improving the veteran’s experience which is priority #1?

Excerpts from the article, *VA secretary: Same-day primary care, mental health appointments coming*, *Military Times*, July 26, 2016, demonstrate the paralysis the VA will encounter until the election in November 2016, especially the VBA. However, it will be the Veterans and employees who will continue to suffer because of it.

- “Veterans will have same-day access to primary care appointments and mental health services at Veterans Affairs facilities by December, VA Secretary Bob McDonald promised Tuesday.
- Addressing the Veterans of Foreign Wars national convention in Charlotte, North Carolina, McDonald said veterans wait an average of five days for primary care, six days for specialty care and two for mental health services, *but VA plans to reduce those further by the end of the year*. (Emphasis Added)
- “You’ve heard many times that VA is broken. So I’ll answer one question: Can the Department of Veterans Affairs be fixed? Can it be transformed? The answer is yes.

Absolutely. Not only can it be transformed, transformation is well underway and we're already seeing results," he said. (Emphasis Added)

- McDonald's address came between speeches by the presidential hopefuls at the conventions and following the release late last month of a blue ribbon panel's review of veterans affairs health.
- Presumed Democratic presidential nominee Hillary Clinton pledged Monday to reduce wait times for medical care, improve coordination between military and VA health care coverage, boost programs for female veterans and to "end the epidemic of veteran suicide." (Emphasis Added)
- Following McDonald's delivery, Republican nominee Donald Trump promised a massive overhaul of the VA but also pledged not to dismantle the government-backed veterans health care system." (Emphasis Added)

The direction the VA will follow depends on the outcome of the election. However, the processing of claims continues to suffer the disgraceful appeals epidemic, stagnation of the backlog, the increase in disability and death claims, and the collateral damage caused by the ineffective transformation of VBA which is not being fixed.

The VBA's disability backlog has increased by **5044**, as well as the overall disability claims by **10,755** since the beginning of FY16.

WEEK	C&P RB OVERALL	WEEKLY DIFF	WEEK	C&P RB BACKLOG	WEEKLY DIFF
10/05/15	368,771	0	10/05/15	72,623	0
07/04/16	371,153	3,893	07/04/16	74,374	311
07/11/16	376,573	5,420	07/11/16	78,577	4,203
07/18/16	379,398	2,825	07/18/16	78,474	-103
07/25/16	379,526	128	07/25/16	77,667	-807
Total Diff		10,755			5,044

Furthermore, EP 930 is not included in these numbers which are mostly premature rating decisions and are concealed from the reported disability backlog numbers. If they are added, the disability backlog numbers will be 91,926.

C&P RB >125	7/25/2016
930	14,259

PENSION MAINTENANCE CENTERS (PMC) CLAIMS

Then there are claims worked at the Pension Maintenance Centers (PMCs). Original and reopened pension claims (EP 180s and 120s) are included in the rating disability claims.

Death claims have increased **87.7 %** since January 2015.

DATES	1/12/2015	7/25/2016	DIFF	Total Increase
140	6,129	10,316	4,187	68.3%
190	9,631	15,756	6,125	63.6%
160	15,588	36,071	20,483	131.4%
165	7,537	10,393	2,856	37.9%
	38,885	72,536	33,651	86.5%

*EP 140 numbers included in the disability rating claims.

	7/18/2016	7/25/2016	W-DIFF
Other Claims			
137	5,658	5,491	-167
150	16,036	15,673	-363
297	6,402	6,273	-129
607	5,760	5,899	139
	33,856	33,336	-520

EP 137 –Dependency Claims; EP 150 – Income Adjustment; EP 297 - Misc; EP 607 – Due Process

Here is the big picture as of the MMWR dated July 25, 2016. However, the total does not include PMC claims minus EP 140 and the over **100,000** claims in our section of collateral damage claims.

RATING	379,516
Nonrating	237,274
Award Adjustments	428,305
APPEALS	318,660
EP 930	17,290
EP 400	64,299
RIP Total	1,445,344

Are all the provisional ratings included in EP 930 completed?

Hidden claims located at the small Washington DC office are coming down, but their age still shows a problem.

- Nonrating - **5227**, with an average days pending of **518** – **July 25, 2016**
- Award Adjustments - **5633**, with **75.5.9%** over 125 days – **July 25, 2016**

COLLATERAL DAMAGE CLAIMS SECTION

In addition to the workload, add these ongoing issues that have not been resolved. AFGE Local 520 will continue to be a voice for those who are waiting for action and the benefits and service they have earned by serving their country.

2014 COST OF LIVING ADJUSTMENTS -The MMWR dated July 25, 2016 indicates that EP 690 - Cost of Living Adjustments (COLAs) and other reviews stood at **24,383**, with **69.2%**, over 125 days old. Again, these cost of living adjustments must be from 2014 because Veterans did not get a COLA for December 2015.

E-BENEFITS INFORMAL CLAIMS RETROACTIVE PAY - According to the MMWR dated November 9, 2015, there were **43** EP 680 under this category. After the approximately 25,000+ end product (EP) 680s that were established via automation to control the e-Benefits informal claims, the number rose to **25,149** according to the MMWR as November 16, 2015. There are now **34,638**, EP 680 - Review of Hemodialysis related cases/conditions with **24,130 69.7% over 125** days as of the MMWR dated July 25, 2016.

FIDUCIARY APPOINTMENTS - "The Department of Veterans Affairs (VA) announced today that an information technology system that it deployed in 2014 and enhanced in 2015, the Beneficiary Fiduciary Field System, allowed it to identify claim processing errors affecting approximately **14,000 Veterans** and survivors. These Veterans' and survivors' claims were initially filed over many years, with some going back as far as 2000. ... These cases represent approximately four percent of such proposals since 2000. http://www.va.gov/opa/pressrel/on_or_about_March_25_2016 (Emphasis Added)

TBI EXAMINATIONS - In addition to the more than 300 cases in Minneapolis KARE 11 originally reported, the VA now says it has identified approximately 24,800 other cases in which TBI exams were not done by the proper specialists. *KARE 11 Investigates: Unqualified VA doctors performed 25,000 TBI exams, KARE May 04, 2016*

NEHMER AGENT ORANGE CLAIMS (LAWSUIT PENDING) -"The National Veterans Legal Services Program, who filed the class-action suit, told McClatchy that since 2010, they've identified more than 1,600 cases in which the VA failed to recognize and pay the required retroactive Agent Orange compensation, resulting in an additional \$42 million being paid to veterans and their survivors." *Agent Orange benefit screening process scrutinized in Congress, Kansas City Star, March 31, 2016*

VDC DROPPED-EVIDENCE REVIEW - the loss of certain documents uploaded through eBenefits and the Stakeholder Enterprise Portal. This defect affected approximately 9,300 Veterans, 10,000 claims, and 80,000 documents of unknown page length.

Here is an example of VBMS' performance.

- "We are experiencing a nationwide issue within VBMS-Core opening contentions and documents. Some users report issues within VBMS-R, as well. I am on hold with the service desk and have reported the outage but at this time I do not have any more of an

update to provide to you. A ticket number and update will be provided once received.”
Email, dated July 29, 2016, 12:30 PM, Subject: VBMS issue

Here are excerpts from *VBA Meeting Notes Topic: NAPA Discussions, May 12, 2016*•

- “... paperless claims and technology have made parts of claims more complicated which has brought the revision of the positions to the forefront.”
- Depending on regions or RO’s – work is not specified based on the skill set. In many cases, RO has to train staff to prepare for increased case load where staff was not trained to manage.
- RO’s provided a lot of information in addition to a new level of understanding of how much work is being conducted by VBA field
- Technology funding is not considered enough, a lot of the manual functions currently being performed can be done in an automated capacity
- IT organization as a whole, the lack of control for how to get assistance is a concern (local IT support) with major consideration with Telework transition”

The challenges employees face every day cannot be expressed in words. However, it is clear that the leadership problem continues to be the number one obstacle to solving them. Whether it’s providing broken tools, lacking the basic understanding of the claims process, instituting procedures contrary to efficiency and effectiveness, or being tone deaf to common sense, the VBA leadership at all levels has proven they are the problem rather than the solution.

As the VA is placed on hold until after the election, Veterans and their survivors will continue suffer and employees will continue to lack the leadership necessary to process claims timely and accurately.

We will continue to be the eyes, ears, and voice for the Veterans and the employees who are called to serve them because the price is still “life and death” for Veterans.



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