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March 20, 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 veterans dying waiting on a decision on their benefits, the appeals dilemma, the colossal VBA workload, and the failed hurried legislative actions.

Excerpts from the article, *Wife says her husband died waiting for VA to approve benefits*, WSB-TV Atlanta, March 7, 2016, only confirm the plight of veterans dying waiting on their benefits and their survivors left behind to continue the fight or not.

- "The wife of a Cherokee County Air Force veteran says he died while waiting for Veteran Affairs to approve his medical benefits.
- Kimberly Beumel, a mother of two, lost her husband in mid-February.
"There were times he said, 'I can't do it anymore,' and I was like, 'no you have to. The kids are only 11 and 15. You have to.' ...
- Channel 2 investigative reporter Erica Byfield met Beumel in Canton Monday to get a glimpse of the paperwork she's compiled in her quest to get the medical benefits for her daughters that the VA never gave her husband.
- "You go through the whole process of trying to be heard," she said while looking through the documents.
- Beumel told Byfield the papers outline her husband's 20-year fight to get the VA to say his time in Desert Storm was related or "service connected," to his battle with PTSD and prostate cancer.
- Wife says her husband died waiting for VA to approve benefits.
- **"My husband passed away and I'll continue to fight but a lot of these other people don't have a voice," Beumel said.** (Emphasis Added)
- An Atlanta VA representative told Channel 2 Action News their leadership is looking into the matter and will contact the family as soon as possible."

Here are excerpts related to the article by Drew Early, Esq from *VA Watchdog.org*:

- **"Tim was one of my clients—I had two die within 5 days and have had a total of 5 now die between early January and February.** (Emphasis Added)
- One was Pension case that Philly set on the appeal for over 4 years, then made an award (I think knowing I was going to prevail at an appeal)—I got the news and told the daughter who was just coming back from the claimant's funeral.
- Marvelous timing that—...; the family was incredibly offended by VA.
- Then a pensioner w/ AO exposure who has Parkinson's—VA C&P said the vet got the Parkinson's from his dementia; treating VA primary care provider and VA neurologist both say the C&P examiner is nuts, as does his private neurologist.
- That could be resolved in 2 seconds with an informal conference with a DRO given all the favorable evidence I have.
- Of course, there's Tim, whose own VAMC oncologist (and the Chief Oncologist there, I might add) says "more likely than not" as to his cancer and an independent internist agrees.... Another one that could be dispatched in 2 seconds in an informal DRO conference.
- And so it goes...
- Tell you what, if Danny Pummill wants to talk with somebody at the ground level, I have an earful for him and my fellow Academy graduates up there. Things aren't getting better and **VA's legislative proposals all indicate a desire to make things easier on the Agency.** But, **what's the purpose of the Agency and why does it exist?** Not for the sake of the Agency but **for the veteran.** (Emphasis Added)
- The Agency has experienced continued growth and funding since 2007—to what end? ...
- ... but you gotta get out of the ditch and learn to crawl before you can even start looking towards walking, then running. "Bob" et al should appreciate that standard Army metaphor.
- I am not about throwing rocks—**I am about solving things, but doing so from the context of the veterans and their families.** I have an idea or two for real solutions and some that may be incredibly unpalatable to others with their own agendas—**but something needs to be done.** /S/ Drew" (Emphasis Added)

In the light of veterans dying waiting for a decision is why the urgency of addressing the current appeal problem is paramount and cannot be put on the back burner waiting for a legislative solution when actions can be taken now to address this problem.

Again, the Columbia VARO is a prime example of the problem. The Decision Review Officers (DRO) are working in a bottomless pit. There are only 10 DROs **with 5 with less than 12 months of experience** and over 13,000 appeals pending. Last month, the Assistant Veterans Service Center Manager (AVSCM), GS14 of the Appeals Team, voluntarily stepped down from his position and was given a DRO, GS13 position. Now, there are 11 DROs.

The Appeals Team is currently comprised of 33 employees -11 DROs GS-13 whose front line supervisor is a recently promoted AVSCM, GS14 with no appeals experience. The DRO's work is assigned by the Appeal Team Coach, GS13 and two Assistant Coaches, GS 12.

There are also 18 GS-10/11 Veterans Service Representatives and 2 GS-6, Claims Assistants who are supervised by one Coach GS13 and two GS 12 Assistant Coaches. This

is a ratio of one supervisor per 6.66 employees. Moreover, these employees are not decision makers. Therefore, there are only 11 DROs to make decisions on the **13,125, pending appeals workload as of the MMWR, dated March 14, 2016.**

Is it even reasonably conceivable that four supervisory personnel will get more work out of the 11 decision makers? This only validates complete and total management failure with a lack of experienced managers to handle the growing appeals backlog in Columbia.

To add insult to injury, the Appeals Coach (GS-13) who has no supervisory authority over the DROs (GS-13) because they are equivalent level employees and can compete for the now vacant Assistant Veterans Service Center Manager (GS-14) position, is conducting monthly performance evaluations on the DROs. In other words, of those DROs who meet time-in-grade requirements and may want to apply for the promotion, they are having performance evaluations conducted by the Coach of Appeals who also may want to apply for the promotion.

Despite placing DROs in a bottomless pit, the VARO Columbia has failed to provide additional staff to the appeals team since they added 4 DROs in July (2) and August 2014 (2) and the VBA has ignored the following recommendations from the *Audit of VA Regional Office's Appeals Management Processes, May 30, 2012, 10-03166-75*, conducted nearly four years ago. Moreover, the problem has only worsened since the report.

- “1. We recommended the Under Secretary for Benefits identify and request the staffing resources needed to meet Veterans Benefits Administration’s processing goals and conduct de novo reviews on all appeals.
2. We recommended the Under Secretary for Benefits revise productivity standards for decision review officers assigned to appeal processing to limit credit to actions that progress the appeal such as Notices of Disagreement, issuance of Statements/Supplemental Statements of the Case, conducting requested hearings, and certification of appeals.
3. We recommended the Under Secretary for Benefits implement criteria requiring appeals staff to initiate a review or development for Notices of Disagreement and certified appeals within 60 days of receipt.”

Furthermore, the *Veterans Benefits Management System, Ongoing Development and Implementation Can Be Improved; Goals Are Needed to Promote Increased User Satisfaction, GAO-15-582, September 2015*, states,

“Decision review officers perform an array of duties to resolve claims issues raised by veterans and their representatives. ...Survey comments from decision review officers stated, for example, that reviews in the VBMS paperless environment take longer because of the length of time spent loading, scrolling, and viewing each document (particularly if the documents are large, such as a service medical record file). Additionally, multiple decision review officers commented that it is easier and faster to review documents in a paper file. Although such comments provide illustrative examples of individual decision review officer’s views and are not representative, according to the PMO Director, decision review officers’ relative dissatisfaction is not surprising because the system

does not yet include functionality that supports their work, which primarily relates to appeals processing. (Emphasis Added)

The VBA has finally allocated overtime money for appeals work, but at the VARO Columbia, the Appeals Team can only work overtime on Saturdays. Although overtime is allocated during the weekdays, the appeals team employees are not allowed to work the appeals workload, but only the rating inventory. As of the MMWR dated March 14, 2016, the appeals workload at VARO Columbia was **13,125, with 11 decision makers** and the rating inventory was **8,674 with 78 decision makers**.

What sense does this make when veterans are dying waiting on a decision for their appeals and the ones who were denied service connection cannot get priority VAMC medical care for the denied disability and if they don't have private medical insurance or funds may not be able to get private medical care which may cause a deterioration of their condition(s) and lead to a premature death?

Veterans should not die waiting for a problem to be fixed that was identified in May 2012 by the VAOIG and employees should not have to work under conditions that are not conducive to effectively providing timely and accurate decisions to veterans and their survivors.

How many more veterans have to die before the leadership in the VA US House and Senate Committees, the SC Congressional Delegation and Governor, and the VA Secretary do something to correct this disgraceful situation at the VARO Columbia and across the nation?

All claims processors not only have to face the colossal VBA workload, but the astronomical amount of adjudication policy and procedural changes that have occurred because of the failed transformation initiatives and technology and the VBA's attempt to adapt policy and procedures to compensate for it.

The policy and procedural changes can be capsulized in excerpts from the attachment – *Highlights from the January 2016 Compensation Service Bulletin sent by email dated January 26, 2016, Subject: January VSCM Bulletin*, addressed to all Veterans Service Center employees, show the unbelievable claims adjudication policy and procedures changes that have occurred in a month.

“The M21-1 Live Manual in Compensation Pension Knowledge Management (CPKM) is the authoritative source for claims adjudication policy and procedures and we are moving forward with plans to sunset the M21-1 in the Web Automated Reference Material System (WARMS). **There may be a lag in content updates in WARMS while resources are dedicated to maintaining and developing new content in CPKM.** (Emphasis Added)

M21-1 Changes

Compensation Service published several changes during the last month.

Among the changes are:

- 21-1, Part I, Chapter 3, Section A (I.3.A)
 - Updated the section on general information on power of attorney (POA) to include information on appointing a POA, extent of authority and duties of representatives, and revoking and terminating representation.
- M21-1, Part I, Chapter 5, Section A (I.5.A)
 - Updated the section on general information on appeals to include new procedures for processing the new version of the VA Form 21-0958, Notice of Disagreement, which includes a new place for the appellant to elect either the DRO review process or the traditional appellate review process.
- M21-1, Part I, Chapter 5, Section B (I.5.B)
 - Updated the section on NODs to include information on/procedures for issues raised on a NOD prior to March 24, 2015, and on or after March 24, 2015.
- M21-1, Part I, Chapter 5, Section E (I.5.E)
 - Updated the section on filing a substantive appeal to include information on/procedures for new claims or appeals issues raised on a substantive appeal.
- M21-1, Part III, Subpart ii, Chapter 2, Section C (III.ii.2.C)
 - Updated the section on informal claims received prior to March 24, 2015, intent to file (ITF) and requests for application to include information on identifying and entering an ITF when the ITF is received on the same date as the claim.
- M21-1, Part III, Subpart ii, Chapter 4, Section A (III.ii.4.A)
 - Updated the section on paper claims folders storage and control to include information on paper claims folders that must be stored in local locked files, and the list of exceptions to the claims folders to be sent to the Restricted Access Claim Center (RACC).
- M21-1, Part III, Subpart ii, Chapter 2, Section D (III.ii.2.D)
 - Updated the section on reopened claims to include submission of new and material evidence in response to an unfavorable eligibility determination.
- M21-1, Part III, Subpart ii, Chapter 5, Section A (III.ii.5.A)
 - Updated the section on jurisdiction over claims folders including information on jurisdiction of radiation claims.
- M21-1, Part III, Subpart ii, Chapter 6 (III.ii.6)
 - Updated the section on determining Veteran status and eligibility for benefits to include completing administrative decisions on a lack of qualifying service.
- M21-1, Part III, Subpart iii, Chapter 2, Section B (III.iii.2.B)
 - Updated the section on migration of service records and the procedures for obtaining them to include revised information on locating clinical records.
- M21-1, Part III, Subpart iii, Chapter 6, Section B (III.iii.6.B)
 - Updated the section on awards and adjustments based upon school attendance to include information about children with more than one Veteran-parent, instructions for adjusting disability or survivors benefits, and confirming a child's attendance in the next school session.
- M21-1, Part III, Subpart iii, Chapter 6, Section C (III.iii.6.C)
 - Updated the section on Department of Veterans Affairs (VA) education benefits under 38 U.S.C. Chapter 35 to include updating the title of the section to better reflect the content it contains.

- M21-1, Part III, Subpart iv, Chapter 4, Section B (III.iv.4.B)
 - Updated the section on conditions of the organs of special sense to include updates to specific eye conditions and hearing impairment.
- M21-1, Part III, Subpart iv, Chapter 4, Section I (III.iv.4.I)
 - Updated the section on conditions of other body systems to include information on hepatitis.
- M21-1, Part III, Subpart v, Chapter 2, Section B (III.v.2.B)
 - Updated the section on decision notices to include information about replacing the outdated version VA Form 21-0958 with the current one.
- M21-1, Part III, Subpart v, Chapter 3, Section A (III.v.3.A)
 - Updated the section on the apportionment process.
- M21-1, Part III, Subpart v, Chapter 4, Section A (III.v.4.A)
 - Updated the section on general information on elections including elections between several entitlements.
- M21-1, Part III, Subpart v, Chapter 8, Section A (III.v.8.A)
 - Updated all topics within the section that discusses the effects of a beneficiary's incarceration on his/her VA benefits.
- M21-1, Part III, Subpart iv, Chapter 2, Section A (III.vi.2.A)
 - Updated the section on simultaneous award adjustments to include information about simultaneous award adjustments that create both an overpayment and underpayment.
- M21-1, Part IV, Subpart ii, Chapter 1, Section B (IV.ii.1.B)
 - Updated the section on claims for service connection (SC) for radiogenic diseases under 38 CFR 3.309(d), including information on centralized processing of claims based on radiation exposure.
- M21-1, Part IV, Subpart ii, Chapter 1, Section C (IV.ii.1.C)
 - Updated the section on claims for SC for disabilities resulting from ionizing radiation exposure under 38 CFR 3.311, including information on transferring radiation claims and obtaining dosimetry information.
 - Updated the section on to claims for SC for disabilities resulting from ionizing radiation exposure under 38 CFR 3.311, including information on centralized processing of claims based on radiation exposure.
- M21-1, Part IV, Subpart ii, Chapter 1, Section D (IV.ii.1.D)
 - Updated the section on claims for service connection (SC) for Posttraumatic Stress Disorder (PTSD) to include requests to the Marine Corps Archives and Special Collections (MCASC).
- M21-1, Part IV, Subpart ii, Chapter 2, Section C (IV.ii.2.C)
 - Updated the section on SC for disabilities resulting from exposure to environmental hazards or service in the Republic of Vietnam to include information about the Vietnam Service Medal service in waters offshore of Vietnam.
- M21-1, Part IV, Subpart ii, Chapter 2, Section H (IV.ii.2.H)
 - Updated the section on special monthly compensation (SMC) including mandatory use of the SMC calculator, use of VA Form 21-2680, Examination for Housebound Status or Permanent Need for Regular Aid and Attendance, avoiding separate SMC assignments for loss or loss of use (L/LOU) of an

extremity, and various issues related to entitlement to Aid and Attendance (A&A).

- M21-1, Part IV, Subpart ii, Chapter 2, Section G (IV.ii.2.G)
 - Updated the section on benefits under 38 U.S.C. 1151 to include information about *Ollis v. McDonald*.
- M21-1, Part IX, Subpart i, Chapter 2 (IX.i.2)
 - Updated the section on automobile and adaptive equipment allowance under 38 U.S.C. Chapter 39 to include information on eligibility for and processing a second automobile allowance.
- M21-1, Part IX, Subpart i, Chapter 4 (IX.i.4)
 - Updated the section on Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA) to include information on Veterans Health Administration Health Administration Center (HAC) website.
- M21-1, Part X, Chapter 11 (X.11)
 - Updated the section on Veterans on active duty in receipt of VA benefits to include information about transmitting the listing of the Department of Defense (DoD) match.
- M21-1, Part X, Chapter 15 (X.15)
 - Updated the section on the Social Security Administration (SSA) prison match to include information on redacting documents containing personally identifiable information (PII) for multiple individuals.”

In a meeting last week, the Quality Review Team (QRT) was instructed that employees have 10 days to implement new changes before being charged with a quality error. A QRT employee stated there have been over 300 changes.

No employee should be placed under these working conditions. More importantly, the performance standards for DROs, RVSRs, VSRs and Claims Assistants have not been changed to account for the extreme volatility caused by the failed transformation and its technology.

Now, let's look at the colossal VBA workload as of the MMWR dated March 14, 2016. The appeals at the BVA and CAVC are not included in the MMWR which is over **110,000**.

RATING	348,658
Nonrating	291,714
Award Adjustments	408,382
APPEALS	326,472
EP 930	20,118
EP 400	67,947
RIP Total	1,463,291

All the provisional ratings are still not completed and are included in EP 930.

Hidden claims located at the small Washington DC office. Why?

- Nonrating - **18,995**, with an average days pending of **604.0 March 14, 2016**
- Award Adjustments - **19,416** with **95.0%** over 125 days. **March 14, 2016**

The backlog is still on the VBA's roller coaster since FY 16.

WEEK	C&P RB BACKLOG	WEEKLY DIFF
10/05/15	72,623	0
02/01/16	77,437	-1,858
02/08/16	83,157	5,720
02/16/16	82,534	-623
02/22/16	82,444	-90
02/29/16	81,451	-993
03/07/16	84,838	3,387
03/14/16	83,178	-1,660
Total Diff		10,555

EP 930, mostly premature rating decisions, backlog stands at 11,811.

PENSION MAINTENANCE CENTERS' 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.

DATES	3/7/2016	3/14/2016	W-DIFF
Other Claims			
137	4,843	4,903	60
150	17,647	17,893	246
297	3,638	3,582	-56
607	5,643	5,516	-127
	31,771	31,894	123

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

Death claims continue their upward trend since January 12, 2015 as indicated below.

DATES	1/12/2015	3/14/2016	DIFF
*140	6,129	8,852	2,723
190	9,631	16,044	6,413
160	15,588	29,415	13,827
165	7,537	10,227	2,690
	38,885	64,538	25,653

*EP 140 numbers included in the disability rating claims.

FORGOTTEN CLAIMS

This workload affects benefits withheld by the VBA.

The MMWR dated March 14, 2016 indicates that EP 690 - Cost of Living Adjustments (COLAs) and other reviews stood at “**20,042**, with **73.2%** over 125 days old.” Again, these cost of living adjustments must be from 2014 because Veterans did not get a COLA for December 2015.

There are also those informal claims discovered in E-benefits hidden under EP 680 - Review of Hemodialysis related cases/conditions. The total number under EP 680 is **36,738**, as of the MMWR dated March 14, 2016.

Excerpts from the article, *VFW charges VA with working to deny Gulf War illness claims*, *Stars and Stripes*, March 15, 2016, validate the dilemma facing veterans and the same VA spin regarding problems.

- WASHINGTON — Veteran claims for Gulf War illness are being rejected at high rates by the Department of Veterans Affairs because the agency is intentionally trying to rule out the condition, the Veterans of Foreign Wars group told House lawmakers Tuesday.
- Aleks Morosky, deputy director of the VFW national legislative service, testified the VA often breaks apart the myriad symptoms of the war’s signature disorder and then separately assigns each condition to a doctor. *The practice results in “minimally supported” diagnoses that often undermine veterans’ ability to get health coverage for the condition.* (Emphasis Added)
- Hundreds of thousands of the 700,000 servicemembers deployed to the Gulf War in 1990 and 1991 have since come down with a cluster of unexplained health problems, ... Congress passed a law requiring the VA to presume the condition is related to the war and provide **veterans health care**. (Emphasis Added)
- David McLenachen, the VA’s deputy under secretary for disability assistance, told Coffman and other lawmakers on the Veterans Affairs panel that he would begin investigating the VFW charges later that same day.
- The VA said last year it reviewed a statistically significant selection of 360 Gulf War claims and found two claims were improperly denied. Another 12 were insufficiently or improperly completed.
- “We’ve taken a lot of steps to improve how we process these claims,” McLenachen said

Excerpts from the two articles below show the failure of rushed legislation, the same mistake happening again, and the staffing problem that is a major contributor to the VHA and the VBA problems.

VA unveils new SES accountability options as Senate fast-tracks vets omnibus, *Federal News Radio*, March 16, 2016

- New proposals from VA Secretary Bob McDonald would reclassify medical center and Veterans Integrated Service Network directors, as well as other health care executives, under Title 38. The secretary would have the authority to hire, set pay, appraise and discipline those senior executives.
- The VA also is proposing an overhaul of the current, expedited disciplinary appeals process under the Veterans Access, Choice and Accountability Act of 2014 (Choice Act).
...
- The committee and the VA also are considering major changes to the veterans disability appeals process. The VA is meeting again with leaders from several leading veterans' service organizations on Thursday, McDonald said, to refine its legislative proposal.
- Accountability is at the core of a major omnibus package of veterans legislation under consideration in the Senate Veterans Affairs Committee, which Chairman Johnny Isakson (R-Ga.) said should be finished and ready for floor debate by April 1. (Emphasis Added)
- "Every once in a while you get to feel good about stuff we do in this body," Tester said.
... But to be honest with you, we haven't accomplished one thing yet. Hopefully with the leadership ... we can get this thing done." (Emphasis Added)

New House bill targets VA recruitment, hiring challenges, Federal News Radio, March 17, 2016.

- **"VA has roughly 43,000 medical and health-related positions unfilled,** Elias Hernandez, chief officer for workforce management and consulting at the Veterans Health Administration, told the House VA Health and Economic Opportunity Subcommittees at a legislative hearing March 16. (Emphasis Added)
- The committee is revising an omnibus package that would overhaul large portions of the Veterans Access, Choice and Accountability Act of 2014. ...

It is time for an independent assessment of the VBA claims processing transformation because timely and accurately processing all claims for Veterans should be at the "heart" of the VBA's mission and providing the employees with the tools, leadership, and performance standards for claims processors using a time motion study should be the "lungs" to breathe new life into the mission.



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LEAVE NO VETERAN BEHIND

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60 Minutes

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DailyCaller.com