

TIME RECEIVED  
March 6, 2016 9:45:58 PM EST

REMOTE CSID  
803 438 7555

DURATION  
435

PAGES  
10

STATUS  
Received

Mar 06 16 10:37p Ronald

803-438-7555

p.1



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March 6, 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 continued saga of the VBA workload, new revelations, and VA in the news.

“As Congress has said for many years now, VA needs to look at the root of the problem of the backlog - training, management, oversight, and technology - and work forward from those four points to address this problem,” Miller added. “Quick fixes will no longer work, and will continue to make veterans wait months, sometimes years, on end for an answer.” *Disability-compensation claims for veterans lag as 'VA backlog' worsens*, <http://usnews.nbcnews.com>, December 4, 2012

Has VA tackled the root of the problem of the backlog— training, management, oversight and technology?

Since the VBA failed to reach its goal of eliminating the backlog by 2015, there has been little to no conversation of the backlog and the collateral damage caused to Veterans by the “quick fixes” used to reduce the backlog.

However, the excerpts from the article, *KARE 11 Investigates: VA expands investigation of unqualified doctors*, *KARE 11*, March 2, 2016, provide one example of the collateral damage to Veterans caused by the “quick fix” used by VBA to reduce the backlog and it may just be the tip of the iceberg and retaliation of whistleblowers still exist.

- “Internal VA records obtained by KARE 11 reveal that veterans in Minnesota, Texas and possibly nationwide have been denied benefits and treatment for traumatic brain injuries by the Department of Veterans Affairs after exams by unqualified doctors and nurses.” “If it’s in Minneapolis, if it’s in Amarillo, where else is it?” asked Dr. Roy Marokus, until recently the Chief of the Compensation and Pension unit at the Thomas E. Creek VA Medical Center in Amarillo, Texas.
- Dr. Roy Marokus is worried about the number of Texas veterans with TBI examined by unqualified doctors.

- At the time, Rep. Tim Walz (D-MN) called upon the VA to conduct a nationwide review.
- After seeing the latest emails, KARE 11 has filed Freedom of Information requests asking for the number of veterans diagnosed by unqualified doctors at every VA hospital nationwide.
- VA policy requires that the initial diagnosis for TBI's must be made by one of four specialists: neurosurgeons, neurologists, psychiatrists and physiatrists.
- "Dr. Marokus, a retired Army Colonel who served two tours in Iraq, fears it's just the tip of the iceberg.
- "It's a hell of a lot of people. A hell of a lot," he said in a recent interview. "Too many."
- Just days after granting that interview, he was demoted. Instead of heading the Compensation and Pension Unit, Dr. Marokus says he was ordered out of his office and is now confined to the hospital library."

The bottom line is understaffing will never be solved by shifting work to unqualified employees, violating your own policies, retaliating against employees with integrity, and then covering up the problem. This is the underlining problem that fits the VA's continued narrative.

Although the backlog has been decreased from a high of 562,826, as of the MMWR dated December 3, 2012, it has increased since October 5, 2015 and now hovers in the 80,000s. We will discuss the other workload increases later caused by a laser focus on the backlog with little or no regard for the other workloads that were spiraling out of control at the same time.

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
		8,828

Furthermore, this number does not include the EP 930 which are primary premature rating decisions and stands at 20,705 with 11,771 over 125 days.

The Columbia VARO had a SE District site visit during January 12-14, 2016. Excerpts from the final report dated January 14, 2016, provide some important insights into the problems facing the VBA claims processing and employees as pertains to the following areas:

### **TECHNOLOGY/ELECTRONIC RECORDS**

- "Southeast District Action Item #2: Columbia reported that there was a need to re-work a large percentage of RBPS automated completions. The Southeast District will request a response from Compensation Service regarding the status of the contract, if it will end, when it will end, or if any changes will be made.

- Southeast District Action Item #3: Columbia asked the Southeast District to request a response from Central Office regarding the retirement of Virtual VA and full integration into VBMS. Fiduciary Hub employees are unable to view Fiduciary documents in the Virtual VA tab in VBMS.
- RO Action Item #3: A visit to the appeals team and conversations with the management team reveal that a substantial percentage of appeals files are still maintained in paper format. Claims files should be scanned in to VBMS to allow teleworking appeals team members to work all claims within their digit ranges from their alternate worksites.
- Southeast District Action Item #4: Columbia reported that work-at-home employees using a shared workstation at the office are required to file a trouble ticket with the National Service Desk each time they are in the office in order to get the local IT to unlock their port. This process can take up to 30 minutes each time. Southeast District will determine if this is an issue nationwide, and if there is anything that can be done to eliminate the downtime for work-at-home employees when they are in the office.”

## APPEALS

- “Appeals inventory showed about 10,100 NODs pending, 1,700 Form 9 pending, and 900 remands pending, for a total of 12,800 cases.”
- Commendable Items: Columbia’s appeals control time of 32.6 days is the lowest in the Southeast District and below the national average of 55.4 days. Having a low appeals control time is Veteran-centric as it means that appeals are under control and thus ‘visible’ to stakeholders in systems such as eBenefits and to representatives at the National Call Centers when Veterans call to inquire about their appeals.

Despite the fact that the appeals inventory was 12,800 and now is 13,090 as of the MMWR dated February 29, 2016 with only 10 decision makers, with 4 who have less than a year experience, to work them, there is no mention in the report of any action to tackle this local and National Crisis.

However, the VARO is commended for its appeal control time of 32.6 days

These two factors are significant in understanding how VBA senior management views the appeals workload. This is especially troubling in light of excerpts from the *Veterans Benefits Administration, Audit of VA Regional Office’s Appeals Management Processes, May 30, 2012, 10-03166-75* conducted almost 4 years ago.

- “Opportunities exist to improve appeals processing at regional offices. Veterans Benefits Administration (VBA) contributed to the growing inventory and time delays. Regional office managers did not assign enough staff to process appeals, diverted staff from appeals processing, and did not ensure appeals staff acted on appeals promptly because compensation claims processing was their highest priority.”
- Regional office staff did not properly record 145 appeals in VACOLS, which delayed processing for an average of 444 days.
- This occurred because appeals staff were not consistently following prescribed procedures to enter the NOD into VACOLS within 7 days.”

When a VARO gets a commendable rating for exceeding VBA prescribed procedures by an average of 24.6 days and the national average is 48.4 days over the prescribed procedures of within 7 days, it is time for a total assessment of how the appeals inventory is perceived by the senior leadership at the VBA.

If the nation is taking an average of 55.4 days to input a NOD into the system, how many appeals are actually being reported when the MMWR uses a 7 day cycle to report the workload?

These excerpts from the Guest Columnist for VAWatchdog.org, Katrina Eagle, Veterans Law Attorney, are appropriate here.

- “I trust you’ve seen the recent article and interactive map showing how VA shuffles around its substandard medical professionals.
- Sadly, such under-performing, poorly trained, and unethical VA employees proliferate the benefits (VBA) side of the agency too.
- I am witnessing first-hand more cases where appeals team coaches and staff (e.g., DRO’s) will go to great lengths to cover up (i.e., continue to deny) mismanaged cases. I think the only reason the media isn’t reporting it is because it’s perceived as less abhorrent than mistreating (or ignoring altogether) veterans who seek healthcare.
- But the truth is, wrongly denying a claim or appeal is just as offensive, unacceptable, and harmful to the veteran as medical malpractice. Think I’m exaggerating? Ask any honorably discharged veteran who risked their life to defend this country, who is now medically disabled because of their military service, submits a valid claim, waits countless months/years for a VA decision only to be denied. Most times, that veteran interprets VA’s “denied” as:
  - a) “you’re lying,”
  - b) “you’re faking your illness and/or its severity,”
  - c) “you’re lazy and looking for a handout,” or
  - d) some combination of a thru c.
- Time and again I have seen the powerful, long-term, debilitating effects of VA’s inherent message when it wrongly denies a veteran’s meritorious claim. For what it’s worth however, it’s not personal; VA denies thousands of veterans’ claims and appeals every day.”

Additionally, excerpts from the article, *VA: Department attorneys, judges sent racist, sexist emails, Stars and Stripes, March 2, 2016*, only add more weight for action to an already sinking appeals ship.

- “Two judges and three attorneys for Department of Veterans Affairs who handle appeals of benefits claims were found to have repeatedly sent racist and sexist emails, the department announced Wednesday.
- All five worked for the Board of Veterans’ Appeals, where veterans can appeal decisions to deny claims for benefits.
- According to a news release, the VA is conducting a review of appeals handled by the attorneys and judges **but has yet to find any indication any appeals decisions were “unjustly influenced” by the conduct.** (Emphasis Added)

- VA did not name the accused, but said it had proposed disciplinary action against the lawyers and filed a complaint against the judges with the Merit Systems Protection Board, which is solely responsible for discipline against judges.
- **VA officials declined to specify the disciplinary action proposed.** (Emphasis Added)
- **The VA Office of Inspector General first tipped off the VA to the emails. Neither the VA or the Office of Inspector General would provide the emails or specify what was contained within the emails that triggered the discipline.** (Emphasis Added)
- "... There are 445,000 pending appeals, according to the VA.
- "The appeals process set by statute is archaic, unresponsive, and not serving veterans well," McDonald said in testimony to a Senate committee in late February"

No, the VA leadership is archaic, unresponsive, and not serving veterans with over 445,000 appeals pending that we know of, and with no action plan to improve the timely and accurate completion of these claims for Veterans and putting the employees who are working these claims in a no-win and deplorable situation.

Deputy Secretary Sloan, in his role as acting VA Secretary shortly after the resignation of Secretary Shinseki, visited the Columbia VARO and stated during a town hall that it was his job to make employees successful. Mr. Deputy, you have failed the employees who labor daily in the appeals team, as well as the nonrating team.

### **NONRATING CLAIMS AND AWARD ADJUSTMENTS**

- The SE District Report also stated, "Dependency inventory was over 6,000 with an ADP of about 318 (target < 225) and ADC of 306 (target < 245).

However, it did not mention that the VARO Columbia nonrating inventory and award adjustments workload at the time of the report was 28,506. Again, there is no mention of any action plan or staffing increase to address it.

It is important to contrast the entire VBA workload here as reported by the MMWR dated February 29, 2016. It is important to note that the appeal cases at the BVA and CAVC are not included in the appeals total of the MMWR.

RATING	348,466
NONRATING	300,018
AWARDS ADJUSTMENTS	418,580
APPEALS	<b>326,759</b>
EP 930	20,846
EP 400	69,376
RIP Total	<b>1,484,045</b>

While it is important to note that dependency claims have decreased since the beginning of FY16 from 219,955 to 198,136 as of MMWR dated February 29, 2016. The number over 125 has

increased from 68.8% to 71.2%. Furthermore, how many of them have to be reworked under EP 930? A serious concern raised in the VARO Columbia SE District report. *Id*

Now, let's leave the SE District report and proceed with the other workloads affecting Veterans and their survivors.

### DEATH CLAIMS

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

DATES	1/12/2015	2/29/2016	DIFF
140	6,129	8,535	2,406
190	9,631	16,121	6,490
160	15,588	29,254	13,666
165	7,537	10,166	2,629
	38,885	64,076	25,191

### HIDDEN WORKLOAD

This workload affects benefits due the Veteran. How long will VBA withhold benefits that are payable to the Veteran without any advocate sounding the trumpet of "foul play"? The veteran does not receive interest on monies being withheld by the VBA.

The MMWR dated February 29, 2016 indicates that EP 690 - Cost of Living Adjustments (COLAs) and other reviews stood at "**19,803** with **73.4%** 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 **37,085**, as of the MMWR dated February 29, 2016.

AFGE Local 520 will continue to monitor and assess the VBA workload to ensure all who should be involved to solve these problems are informed and cannot use the excuse that they did not know of the problems.

However, the leadership and oversight problems at the VA continue to bleed out without a tourniquet being applied. Excerpts from the following articles bear it out:

*INTERACTIVE: Take A Ride On VA's Bad-Bosses Merry-Go-Round, The Daily Caller, February 21, 2016*

- "Department of Veterans Affairs leaders have shuffled nearly 100 hospital administrators to three or more states each in the last eight years, often to deal with underperforming directors whom they could not fire, according to a Daily Caller News Foundation analysis.

- It also provides a roadmap for a costly trail of chaos left by less well-known VA hospital executives on a management merry-go-round that continually shifts poor performers and problem employees to different jobs and locations in the hope of getting different outcomes.
- ... Secretary Bob McDonald, who promised a transformation of the VA when he took over in 2014, is trying to fix past mistakes by moving around the same people who oversaw them, not bringing in new leaders.
- The DCNF has found evidence tying nearly half of the administrators on the map to some kind of scandal or controversy.”

*VA will let embattled executives keep their jobs, First Coast News, February 22, 2016*

- “A pair of senior Veterans Affairs executives at the center of a months-long scandal over the department’s internal promotion system and relocation expenses will keep their regional director jobs, after two failed attempts from VA officials to reassign them elsewhere.
- **But Gibson defended the transfers as legitimate, and he said he has confidence in both women’s leadership skills moving ahead.** (Emphasis Added)
- However, Gibson noted that he is still reviewing possible disciplinary actions against the pair and two other senior executives involved in the larger case. He said that would not include reassignments or demotions for Rubens and Graves, but would not specify what that would be or when that would happen.”

*Scandal-Plagued Top Veterans Affairs Officials Keep Their Jobs, Can't Even Be Reassigned, Breitbart.com, February 24, 2016*

- “When Acting Undersecretary for Benefits Danny Pummill was asked in November by the House Veterans Affairs Committee how the program could have been so flagrantly abused, he mumbled, **“We weren’t paying attention to everything we should have been paying attention to. We need to do a better job of that.”** (Emphasis Added)
- **“It’s devastating that the senior leaders are not held as accountable as the lowest people in the organization,” Pummill admitted.** (Emphasis Added)
- Acting Inspector General Linda Halliday vowed to Congress that **“the most critical change” to the agency’s culture would be “ensuring that those who abused the program are punished.”** (Emphasis Added)

*Top VA official slams agency's inspector general, Washington Examiner, February 22, 2016*

- Gibson slammed the VA watchdog for what he has characterized as an unfair report that cost Diana Rubens and Kimberly Graves, the two regional managers in question, their reputations.
- **Pressed further, Gibson admitted he was referring as an example to a Feb. 11 inspector general report that alleged a VA suicide hotline had a tendency to go to voicemail and leave veterans' pleas for help unanswered.** (Emphasis Added)
- The allegations that sparked the inspector general's review of the failing suicide hotline dated back to May 2014.”

*VA announces improvements to Veterans Crisis Line, News4JAX, February 26, 2016*

- “The national Veterans Crisis Line will partner more closely with the Suicide Prevention Office and Mental Health Services of the Department of Veterans Affairs to better serve the country's veterans, the VA announced Friday.
- VA Deputy Secretary Sloan Gibson today visited the Crisis Line for the third time in a year and announced the partnership, which includes VA's National Mental Health Director for Suicide Prevention as well as several hubs of expertise, including one Center of Excellence focusing on suicide prevention research and education located at the same medical campus as the Crisis Line responders in Canandaigua, NY.
- **The improvements will enhance and accelerate progress at the Veterans Crisis Line, which serves as a life-saving resource for veterans who find themselves at risk of suicide, the VA said.**” (Emphasis Added)

*OSC piles on to mounting criticism of VA OIG, Federal News Radio, February 29, 2016*

- “As the Veterans Affairs Department’s Office of Inspector General faces repeated and mounting assessments from leaders within its own agency, the IG can add another critic to the list.
- The Office of Special Counsel said the VA IG did not respond to the issues two whistleblowers raised, meaning the reports it released on scheduling problems at the Hines VA Hospital in Chicago and the Overton Brooks VA Medical Center in Shreveport, Louisiana, are incomplete.
- “The OIG investigations found evidence to support the whistleblowers’ allegations that employees were using separate spreadsheets outside of the VA’s electronic scheduling and patient records systems,” OSC Special Counsel Carolyn Lerner wrote in a Feb. 25 letter to President Barack Obama. “However, the OIG largely limited its review to determining whether these separate spreadsheets were ‘secret.’”

Is the VAOIG providing timely oversight? Is the VAOIG investigating all whistleblower’s complaints? Is the VAOIG properly staffed to provide timely oversight considering the volume of VA’s complaints? Is there valid oversight of the VA?

Excerpts from the article, *The president's 2017 budget request: Veterans Affairs Department, Fierce Department IT, February 10, 2016*, may answer these questions.

- “In response to VA's 2014 hospital waitlist scandal and alleged misuse of privileges by two senior executives at the agency, the budget request reflects an increased investment in oversight. VA's fiscal 2017 budget proposed a \$23.3 million, or 14 percent increase, over the fiscal 2016 enacted level for the OIG.
- “We have increase the Office of Inspector General's budget fairly considerably,” said Murray. “This will allow increased oversight of VA programs.”
- “This will allow an additional 100 staff members in the office of inspector general, both at current and new locations nationwide, to improve accountability throughout the

department. We believe this is right and appropriate given the correlating VA budget and given the increasing number of veterans programs," he said."

*An open letter to Robert McDonald, secretary of the U.S. Department of Veterans Affairs, 9 WCPO Cincinnati, March 2016*

"Dear Secretary McDonald,

- Two years ago, the president appointed you to turn around the Veterans Affairs department. Two years ago, your predecessor resigned after a nationwide scandal over lengthy wait times for health care.
- **We applauded your appointment, but two years later, we haven't seen much change where it really counts – in the care provided to the people who answered the call to serve our nation during war.** (Emphasis Added)
- We found that respected medical programs at our \$373 million medical center were gutted to make the balance sheet look better.
- We could go on.
- But here's what we want to know, Mr. Secretary: *What are you going to do to fix the problems?*
- **You are a veteran yourself.** A graduate of West Point. Emblazoned on the West Point coat of arms is its motto: "**Duty, Honor, Country.**" That's more than just an empty slogan. It is a guide to action. **And we need action now.**" (Emphasis Added)

The hour glass is running out of sand. The VBA claims processing is at critical mass, but there is no captain at the helm and no plan to implement. The VA leadership problems have sucked the oxygen out of the VBA's respirator. Patients are dying with no action plan to revive them.

Furthermore, the advocates for the Veterans are missing in action because despite over 1.5 million claims pending, the silence continues. The status quo also continues. VA's focused on a plan called "MYVA" which at its core is directed primary for the VAMC coupled with VA and the Congress' inability to find a solution how to hold its senior leaders accountable have exacerbated the out of control VBA claims processing workload.

It should be clear now, who at the VA is impossible to fire. Unfortunately, the front line employees have to witness this disgrace. How can anyone expect high morale among the front line employees when this picture of VA leadership is being painted everyday on the open canvass of America and on the backs of those who served to preserve our Nation's value, principles, and Constitution?

Furthermore, we also witness senior VA leadership shifting the blame for its failure to others. The IG report on the National Crisis line was criticized by VA, but then they announced improvement to it shortly thereafter. They took action to demote two senior leaders, but are now defending their reinstatement by stating they have "confidence in both women's leadership skills moving ahead." These are examples of the real problem of the VA senior leadership - convenient flip flops and talking points.

Hidden in all this madness is the fact that there is understaffing at the VBA. The technology did not eliminate the need for more people as anticipated. Therefore, VBA is left with a need to hire more claims processors, but they don't grow on trees.

VBA is not only facing a need for more people, but a training program that can effectively train them. The bottom line is without effective training, the employees who are trained will be diverted from the task of serving Veterans effectively. The VBA training problem is also in disarray and for "High Leverage Stations" training has for all practical purposes has ceased.

The problems of training, management, oversight, and technology still exist. It has also been my experience that good leaders inspire others especially in troubled waters. The VBA is in troubled waters as pertain to VBA claims processing. Veterans have earned the right to expect and employees yearn for leaders to lead them to the "promise land" through this VBA's desert of missteps, manipulation, incompetence, and retaliation. They need action now!!! Who will help?

AFGE Local 520 is committed to bringing this National Crisis to the public square, so Veterans can receive the benefits they have earned by their service to our Nation and the VBA employees can effectively serve them.



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