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Report to the Ranking Democratic
Member, Committee on Veterans'
Affairs, House of Representatives

August 2002

VETERANS' BENEFITS

Quality Assurance for Disability Claims and Appeals Processing Can Be Further Improved



G A O

Accountability * Integrity * Reliability

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Contents

| | | |
|---------------|--|----|
| Letter | | 1 |
| | Results in Brief | 2 |
| | Background | 3 |
| | The Board Understates Its Accuracy and Does Not Capture Certain Data for Improving Quality | 6 |
| | VA Does Not Systematically Assess Consistency of Decision Making | 11 |
| | Conclusions | 13 |
| | Recommendations for Executive Action | 14 |
| | Agency Comments and Our Evaluation | 15 |

| | | |
|-------------------|---|----|
| Appendix I | Steps in the Disability Claims and Appeals Process | 17 |
|-------------------|---|----|

| | | |
|--------------------|--|----|
| Appendix II | Board of Veterans' Appeals Illustrations of Difficult Judgments Resulting in Decision-Making Variations | 19 |
|--------------------|--|----|

| | | |
|---------------------|---|----|
| Appendix III | Comments from the Department of Veterans Affairs | 20 |
|---------------------|---|----|

| | | |
|---------------|--|---|
| Tables | | |
| | Table 1: Board's Accuracy Rate Goals and Performance | 8 |
| | Table 2: Board's Quality Review Criteria | 9 |

Abbreviations

| | |
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| SSA | Social Security Administration |
| VA | Department of Veterans Affairs |
| VBA | Veterans Benefits Administration |



United States General Accounting Office
Washington, DC 20548

August 16, 2002

The Honorable Lane Evans
Ranking Democratic Member
Committee on Veterans' Affairs
House of Representatives

Dear Mr. Evans:

For fiscal year 2002, the Department of Veterans Affairs (VA) estimates that it will pay about \$25 billion in cash disability benefits to about 3.3 million disabled veterans and their families. When veterans submit disability claims, VA's 57 regional offices make decisions to either grant or deny the requested benefits. Veterans who are dissatisfied with regional office decisions may file appeals with VA's Board of Veterans' Appeals, and in about half of such appeals, the Board has either granted the benefits denied by the regional offices or remanded (returned) the cases to the regional offices for rework. Additionally, VA reported an accuracy rate of less than 70 percent for regional office disability decisions when it tested a new quality assurance program in fiscal year 1998. As a result, we issued two prior reports at your request on VA's system for measuring and improving the accuracy of regional office decisions.¹

Recently, questions have arisen about the quality of Board decisions. When the Board itself denies benefits requested by veterans, they may appeal to the U.S. Court of Appeals for Veterans Claims. In over half of such appeals, the court has either granted the benefits denied by the Board or remanded the decisions to the Board for rework. As a result, you now have asked that we examine VA's efforts to ensure the quality of decisions made by the Board. Specifically, you asked that we assess the effectiveness of VA's system for (1) measuring and improving the accuracy of the Board's decisions and (2) determining the consistency (extent of variation) in decision making across the spectrum of regional office and Board disability adjudicators.

¹ U.S. General Accounting Office, *Veterans' Benefits Claims: Further Improvements Needed in Claims-Processing Accuracy*, [GAO/HEHS-99-35](#) (Washington, D.C.: Mar. 1, 1999), and *Veterans' Benefits: Quality Assurance for Disability Claims Processing*, [GAO-01-930R](#) (Washington, D.C.: Aug. 23, 2001).

To address your request, we reviewed (1) data and documents of the Board of Veterans' Appeals; (2) data and documents of the Veterans Benefits Administration (VBA), the VA component responsible for the operations of the 57 regional offices; (3) reports on studies of VA disability claims processing conducted by the Veterans' Claims Adjudication Commission, the National Academy of Public Administration, and VA's Claims Processing Task Force; and (4) data reported by the U.S. Court of Appeals for Veterans Claims on its disposition of veterans' appeals. We also interviewed officials of the Board and VBA about claims and appeals processing accuracy and consistency issues. We conducted our review from October 2001 through June 2002 in accordance with generally accepted government auditing standards.

Results in Brief

In fiscal year 1998, the Board of Veterans' Appeals established its first quantitative program to evaluate and score its decision-making accuracy and to collect data to identify areas where the quality of decision making needs improvement. The accuracy measure used by the Board understates its true accuracy rate because the Board's accuracy rate calculations include certain deficiencies, such as errors in a written decision's format, which would not result in either a reversal or a remand by the Court. In fiscal year 2001, if the Board had excluded format deficiencies from its accuracy rate calculations, its accuracy rate would have been 92 percent versus the reported rate of 87 percent. Even so, the Board's quality assurance program does not capture certain data that potentially could further help improve the quality of the Board's decisions. For example, the Board does not record in its quality assurance database any information identifying the specific medical issues involved in cases where a Board decision was judged as being in error. Having such data could enhance the Board's ability to target training needed for its decision makers.

VA does not assess the consistency of decision making across the spectrum of regional office and Board disability adjudicators, even though VA acknowledges that in many cases two adjudicators of equal competence could review the same evidence but render different decisions due to the difficult judgments often required in decision making. The result is that variations may occur in the benefits provided to veterans who have similar impairments and circumstances. Even though available evidence provides indications that variations in decision-making may occur across all levels of VA adjudication, VA does not conduct systematic assessments to determine the degree of variation that occurs for specific impairments and to provide a basis for determining ways, if considered necessary, to reduce such variation.

This report contains recommendations to the Secretary of VA concerning actions to improve VA's ability to better ensure the accuracy and consistency of disability decisions made across the spectrum of decision making in VA. In responding to a draft of this report, VA concurred fully or in principle with our recommendations. However, although VA agreed that consistency is an important goal, it did not fully respond to our recommendation regarding consistency because it did not describe how it will measure consistency and evaluate progress in reducing any inconsistencies it may find. Instead, VA said that consistency is best achieved through comprehensive training and communication among VA components involved in the adjudication process and discussed efforts underway to do so.

Background

VA has two basic cash disability benefits programs. The compensation program pays monthly benefits to eligible veterans who have service-connected disabilities (injuries or diseases incurred or aggravated while on active military duty). The payment amount is based on the veteran's degree of disability, regardless of employment status or level of earnings. By contrast, the pension program assists permanently and totally disabled wartime veterans under age 65 who have low incomes and whose disabilities are not service-connected.² The payment amount is determined on the basis of financial need.

VBA and the Board process and decide veterans' disability claims and appeals on behalf of the Secretary. The claims process starts when veterans submit claims to one of VBA's 57 regional offices. (See app. I for the overall flow of claims and appeals processing.) By law, regional offices must assist veterans in supporting their claims. For example, for a compensation claim, the regional office obtains records such as the veteran's existing service medical records, records of relevant medical treatment or examinations provided at VA health-care facilities, and other relevant records held by a federal department or agency. If necessary, the regional office arranges a medical examination for the claimant or obtains a medical opinion about the claim. The regional office adjudicator then must

- analyze the evidence for each claimed impairment (veterans claim an average of about five impairments per claim);

² Veterans age 65 or older do not have to be permanently and totally disabled to become eligible for pension benefits, if they meet the income and military service requirements.

-
- determine whether each claimed impairment is service-connected (VA grants service-connection for an average of about three impairments per claim);
 - apply VA's Rating Schedule which provides medical criteria for rating the degree to which each service-connected impairment is disabling (disability ratings can range from zero to 100 percent, in 10-percent increments);
 - determine the overall disability rating that results from the combination of service-connected impairments suffered by the veteran; and
 - notify the veteran of the decision.

If a veteran disagrees with the regional office's decision, he or she begins the appeals process by submitting a written Notice of Disagreement to the regional office. During fiscal years 1999-2000, the regional offices annually made an average of about 616,000 decisions involving disability ratings, and veterans submitted Notices of Disagreement in about 9 percent of these decisions. Veterans can disagree with decisions for reasons other than the outright denial of benefits that occurs, for example, in a compensation case when a regional office decides an impairment claimed by a veteran is not service-connected. The veteran also may believe the severity rating assigned to a service-connected impairment is too low and ask for an increase in the rating.

In response to a Notice of Disagreement, the regional office provides a further written explanation of the decision, and if the veteran still disagrees, the veteran may appeal to the Board. During fiscal years 1999-2000, about 48 percent of the veterans who filed Notices of Disagreement in decisions involving disability ratings went on to file appeals with the Board. In fiscal year 2001, VBA began nationwide implementation of the Decision Review Officer position in its regional offices. Now, before appealing to the Board, a veteran may ask for a review by a Decision Review Officer, who is authorized to grant the contested benefits based on the same case record that the regional office relied on to make the initial decision. VBA believes this process will result in fewer appeals being filed with the Board.

Located in Washington, D.C., the Board is an administrative body whose members are attorneys experienced in veterans' law and in reviewing benefits claims. The Board's members are divided into four decision teams, with each team having up to 15 Board members and 61 staff attorneys. Each team has primary responsibility for reviewing the appeals that originate in an assigned group of regional offices. Board members'

decisions must be based on the law, regulations, precedent decisions of the courts, and precedent opinions of VA's General Counsel.³ During the Board's appeals process, the veteran or the veteran's representative may submit new evidence and request a hearing.

During fiscal years 1999 and 2000, for all VA programs, the Board annually decided an average of about 35,700 appeals, of which about 32,900 (92 percent) were disability compensation cases. The average appealed compensation case contains three contested issues. As a result, in some cases, the Board member may grant the requested benefits for some issues but deny the requested benefits for others. During fiscal years 1999 and 2000, the Board in its initial decisions on appealed compensation cases granted at least one of the requested benefits in about 24 percent of the cases. In some instances, the Board member finds a case is not ready for a final decision and returns (or remands) the case to the regional office to obtain additional evidence and reconsider the veteran's claim. During fiscal years 1999 and 2000, respectively, the Board in its initial decisions on appealed compensation cases remanded 38 percent and 34 percent of the cases.⁴ After obtaining additional evidence for remanded cases, if the regional office still denies the requested benefits, it resubmits the case to the Board for a final decision.

If the Board denies benefits or grants less than the maximum benefit available under the law, veterans may appeal to the U. S. Court of Appeals

³ According to VA, precedent opinions of the General Counsel are legal opinions that interpret court decisions, laws, or regulations. These opinions may apply such an interpretation to a certain set of facts, or they may be used to implement an interpretation of law consistently across VA. To the extent precedent opinions may contain any statements of VA policy, such policy statements are not binding on the Board merely because they appear in a precedent opinion. General Counsel precedent opinions also are binding on regional office adjudicators.

⁴ Effective February 22, 2002, a new VA regulation allows the Board to obtain evidence, clarify evidence, cure a procedural defect, or perform most any other action essential for a proper appellate decision without having to remand the appeal to the regional office. It also allows the Board to consider additional evidence without having to refer the evidence to the regional office for initial consideration and without having to obtain the appellant's waiver. Under this new regulation, the Board expects that the proportion of appeals remanded to regional offices will decline to about 12 percent. For those cases that previously would have been remanded to regional offices, the Board provides information to VBA on the reasons for actions taken by the Board itself under this new regulation, such as obtaining new evidence or clarifying evidence.

for Veterans Claims.⁵ The court is not part of VA and not connected to the Board. During fiscal years 1999 and 2000, veterans filed appeals with the court in an estimated 10 percent of the Board's decisions. Unlike the Board, the court does not receive new evidence, but considers the Board's decision, briefs submitted by the veteran and VA, oral arguments, if any, and the case record that VA considered and that the Board had available. The court may dismiss an appeal on procedural grounds such as lack of jurisdiction, but in the cases decided on merit, the court may affirm the Board's decision (deny benefits), reverse the decision (grant benefits), or remand the decision back to the Board for rework. During fiscal years 1999 and 2000, the court annually decided on merit an average of about 1,800 appealed Board decisions, and in about 67 percent of these cases, the court remanded or reversed the Board's decisions in part or in whole.⁶ Under certain circumstances, a veteran who disagrees with a decision of the court may appeal to the U.S. Court of Appeals for the Federal Circuit and then to the Supreme Court of the United States.

The Board Understates Its Accuracy and Does Not Capture Certain Data for Improving Quality

In fiscal year 1998, the Board established the first quantitative quality assurance program to evaluate and score the accuracy of its decisions and to collect data to identify areas where the quality of decision-making needs improvement. The accuracy measure used by the Board understates its true accuracy rate because the Board's accuracy rate calculations include certain deficiencies that would not result in either a reversal or a remand by the court. Even so, the Board's quality assurance program does not capture certain data that potentially could help improve the quality of the Board's decisions. Such data include information identifying the specific medical issues involved in cases where a disability decision was judged as being in error. Having such data could enhance the Board's ability to target training for its decision makers.

⁵ Before appealing to the court, a veteran may ask the Board itself to review any previous Board decision on the basis of "clear and unmistakable error." During fiscal years 1999 and 2000, the Board revised a total of only 23 of its decisions due to clear and unmistakable error. VA regulations state that clear and unmistakable error is a specific and rare kind of error, of fact or law, that when called to the attention of later reviewers compels the conclusion, with which reasonable minds could not differ, that the result would have been manifestly different if not for the error. Generally, either the correct facts, as they were known at the time, were not before the Board, or the statutory and regulatory provisions in effect at the time were not correctly applied.

⁶ The court's *Annual Reports* did not disaggregate data on remands and reversals, but according to the Board, the court reversed Board decisions in whole or in part in only about 1.6 percent of the cases.

The Board Established Its First Quantitative Quality Assurance Program in 1998

On the basis of the results of the quality assurance program it established in fiscal year 1998, the Board estimated that 89 percent of its decisions were accurate (or “deficiency-free”). Using these results as a baseline, VA established performance accuracy goals for the Board. One of the Board’s strategic performance goals is to make deficiency-free decisions 95 percent of the time. To calculate its estimated overall accuracy rate, the Board does quality reviews of selected Board decisions.⁷ We reviewed the Board’s methods for selecting random samples and calculating accuracy rates and concluded that the number of decisions reviewed by the Board was sufficient to meet the Board’s goal for statistical precision in estimating its accuracy rate.⁸ However, we brought to the Board’s attention some issues that caused the Board to fall short of proper random sampling and accuracy rate calculation methods, such as not ensuring that decisions made near the end of the fiscal year are sampled or that the results from quality reviews are properly weighted in the accuracy rate calculation formula. We do not believe the overall accuracy rate reported by the Board for fiscal year 2001 would have been materially different if these methodological issues had been corrected earlier; however, if not corrected, these issues potentially could lead to misleading accuracy rate calculations in the future. The Board agreed in principle to correct these issues. As of June 2002, the Board had not yet instituted corrective actions.

The Board’s Actual Level of Accuracy Is Higher Than Reported

According to VA’s performance reports, the Board has come close but has not achieved its annual interim goals for accuracy (see table 1).⁹ However, in calculating its reported accuracy rates, the Board includes deficiencies that are not “substantive”—that is, they would not be expected to result in

⁷ During our review, we brought to the Board’s attention certain issues regarding the compliance of its quality assurance program with the governmental internal control standard calling for separation of key duties and the governmental performance audit standard calling for organizational independence for agency employees who review and evaluate program performance. These issues arose because certain Board members who were directly involved in deciding veterans’ appeals were also involved in reviewing the accuracy of such decisions. Effective May 2002, the Board took corrective actions to resolve these issues; now, all quality reviews from which accuracy rates are determined are done by persons not directly involved in deciding veterans’ appeals.

⁸ The Board’s goal is that VA can have 95 percent confidence that the Board’s true accuracy rate is no more than 5 percentage points higher or lower than the estimated accuracy rate.

⁹ The Government Performance and Results Act of 1993 requires VA, as well as other federal agencies, to clearly define its mission, set goals, measure performance, and submit to the Congress annual performance plans and annual reports on its success in achieving program performance goals.

either a remand by the court or a reversal by the court.¹⁰ Consequently, the reported accuracy rates understate the Board's level of accuracy that would result if only substantive deficiencies were counted in the calculation.

Table 1: Board's Accuracy Rate Goals and Performance

In percentages

| Accuracy Measure | Accuracy rate) | | | | | Strategic goal |
|----------------------------------|----------------|---------|---------|--------------|--------------|----------------|
| | FY1999 | FY 2000 | FY 2001 | FY 2002 | FY 2003 | |
| Accuracy rate goal | 90.5 | 91.5 | 90 | 91 | 92 | 95 |
| Reported performance (estimated) | 84 | 86 | 87 | ^a | ^a | ^a |

^aNo data available.

Source: VA budget submissions and performance plans, fiscal years 2000-2003.

Under its quality assurance program, the Board's quality reviewers assess the accuracy of selected decisions on the basis of six critical areas (see table 2). One error (or deficiency) in any of these six areas means that a decision fails the quality test. However, according to the Board, all six areas would include certain deficiencies that are not substantive. In particular, according to the Board, most deficiencies in the "format" category are not substantive. In fiscal year 2001, the format category accounted for about 38 percent of all recorded deficiencies. At our request, the Board recalculated its accuracy rate for fiscal year 2001, excluding format deficiencies, and the resulting accuracy rate was 92 percent, as compared with the reported accuracy rate of 87 percent. Excluding all other nonsubstantive deficiencies presumably would have resulted in an even higher accuracy rate. In contrast with the Board, beginning in fiscal year 2002, VBA no longer includes nonsubstantive deficiencies in its accuracy rate calculations; however, it continues to monitor them. VBA took this action based on a recommendation by the 2001 VA Claims Processing Task Force, which said that mixing serious errors with less significant deficiencies can obscure what is of real concern.

¹⁰ The court may set aside the Board's findings of fact that are "clearly erroneous." A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed. If there is a plausible basis in the record for the Board's factual determinations, the court cannot overturn them, even if it might not have reached the same determinations.

Table 2: Board’s Quality Review Criteria

| Six critical areas | Criteria |
|---------------------------|---|
| Issues | Did the decision maker identify and address all issues that were explicitly expressed in, or could be inferred from, the evidence? |
| Evidence | Did the decision maker account for all evidence, including the evidence in favor of and the evidence against the veteran’s claim? |
| Laws and regulations | Did the decision maker cite and set forth all applicable laws and regulations? |
| Reasons and bases | Did the decision maker fully and accurately coordinate the facts (evidence) and laws and regulations with each other and clearly explain how he or she reached the decision? |
| Due process | Did the decision maker address all technical aspects of due process such as accounting for jurisdictional problems, hearing requests, and possible remand reasons? |
| Format | Did the decision maker write the decision so that it meets the basic requirements of format such as correct grammar, spelling, decision structure, and requirements of statute? |

Source: Board of Veterans’ Appeals, 2002.

The Board’s Quality Review Program Does Not Capture Certain Data That Could Help Improve Quality

The Board’s quality review program subdivides the six critical areas shown in table 2 into 31 subcategories. For example, if a quality reviewer classifies an error as stemming from “reasons and bases,” the reviewer must then indicate whether the error was due to misapplying legal authority, failing to apply appropriate legal authority, using an incorrect standard of proof, or providing an inadequate explanation for the decision. This information is recorded in the Board’s quality review database, providing the Board with data that can be analyzed to identify training needed to improve quality.

However, the Board does not record in its quality review database any information on the specific issue that prompted the appeal (such as whether a disability is service-connected) or the specific medical impairment to which an error is related. For example, a quality reviewer might find an error in a Board decision for an appeal that involved four separate medical impairments—two for which the veteran had requested service connection and two others for which he had requested a disability rating increase. On the basis of information that the quality review database currently captures, however, the Board could not determine which of the four impairments the error was related to, nor could the Board determine whether the error was related to a request for service-connection or an increased disability rating.

This is not the case, however, for Board decisions remanded by the Court of Appeals for Veterans Claims. For these cases, the Board maintains a separate database with information on the reasons that the court remands decisions back to the Board for rework. For each issue that the court remands in a compensation case, the Board records in the database such

information as: (1) whether the issue involved a request for service-connection or an increased rating, (2) the diagnostic code of the impairment involved in each issue, and (3) the reason for the remand. According to Board officials, being able to analyze the court's reasons for remands by type of decisional issue and type of impairment enhances the Board's ability to reduce remands from the court through appropriate training.

VBA and the Board recognize that in some cases, different adjudicators reviewing the same evidence can make differing judgments on the meaning of the evidence, without either decision necessarily being wrong. In such cases, VBA and the Board instruct quality reviewers not to record an error. A hypothetical case provided by the Board furnishes an example. In this case, a veteran files a claim in 1999 asserting he suffered a back injury during military service but did not seek medical treatment at that time. One of the veteran's statements says he injured his back during service in 1951, but another says he injured his back in 1953. An adjudicator may find that this discrepancy in dates adversely affects the claimant's credibility about whether an injury actually occurred in service, but the quality reviewer may consider the discrepancy to be insignificant. Where such judgments are involved, the Board's and VBA's quality review programs recognize that variations in judgment are to be expected and are acceptable as long the degree of variation is within reason. (App. II provides other examples of difficult judgments that could result in decision-making variations and explains VA's "benefit-of-the-doubt" rule.)

The Board and VBA, however, differ in their approaches to collecting information about cases where this type of variation occurs. In such instances, the Board's quality reviewers note why they believe an alternative decision could have been made and send the explanation to the deciding Board member. However, they do not enter any of this information in the quality review database. In contrast, VBA recently instructed its quality reviewers to enter such information in the VBA quality review database, even though no error is recorded in the database. VBA believes that by identifying and analyzing cases in which quality reviewers believed the adjudicator's judgment was pushing against the boundary of reasonableness, it potentially can identify opportunities to improve the quality of decision making by improving training.

VA Does Not Systematically Assess Consistency of Decision Making

Even though evidence suggests decision making across regional office and Board adjudicators may not be consistent, VA does not systematically assess decision making consistency to determine the degree of variation that occurs for specific impairments and to provide a basis for identifying steps that could be taken, if considered necessary, to reduce such variation. In its 2003 performance plan, VA acknowledged that veterans are concerned about the consistency of disability claims decisions across the 57 regional offices. In a nationwide comparison, VBA projected in its fiscal year 2001 Annual Benefits Report that the average compensation payments per disabled veteran in fiscal year 2002 would range from a low of \$5,783 in one state to a high of \$9,444 in another state. According to a VBA official, this disparity in average payments per veteran might be due in part to demographic factors such as differences in the average age of veterans in each state. However, this disparity in average payments per veteran also raises the possibility that when veterans in the same age group submit claims for similar medical conditions, the regional office in one state may tend to give lower disability ratings than the regional office in another state.

Indeed, in 1997, the National Academy of Public Administration reviewed disability claims processing and said VA needed to identify the degree of decision-making variation expected for specific medical issues, set consistency standards, and measure the level of consistency as part of the quality review process or through testing of control cases in multiple regional offices. Furthermore, in 2001, VA's Claims Processing Task Force said there was an apparent lack of uniformity among regional offices in interpreting and complying with directives from VA headquarters and that VA's regulations and the procedures manual for regional offices were in dire need of updating. The task force concluded that there was no reasonable assurance that claims decisions would be made as uniformly and fairly as possible to the benefit of the veteran. Even though such concerns and issues exist, VA does not systematically assess the decision-making consistency of regional office adjudicators.

Similarly, VA does not assess consistency between decisions made by regional offices and the Board even though evidence suggests this issue may warrant VA's attention. Because veterans may submit new evidence during the appeals process, one might assume that the Board generally grants benefits denied by regional offices due to the impact of such new evidence. However, an analysis in 1997 of about 50 decisions in which the Board had granted benefits previously denied by regional offices yielded a different viewpoint. Staff from both VBA and the Board reviewed these cases and concluded that most of these Board decisions to grant benefits

had been based on the same evidence that the regional offices had considered in reaching their decisions to deny benefits. The reviewers characterized the reason for the Board members' decisions to grant benefits as a difference of opinion between the Board members and regional office adjudicators in the weighing of evidence. Furthermore, even in remanded compensation cases for which regional offices have obtained new evidence in accordance with the Board's remand instructions and then again denied the benefits, the Board generally has granted benefits in about 26 percent of these cases after they have been resubmitted for a final decision. This seems to indicate that, in these particular cases, Board members in some way differed with regional office adjudicators on the impact of the new evidence obtained by the regional offices before resubmitting the remanded cases to the Board.

Available evidence also provides indications that the issue of variations in decision making among the Board members themselves may warrant VA's attention in studies of consistency. Historically, there have been variances in the rates at which the Board's four decision teams have remanded decisions to regional offices for rework. No systematic study has been done to explain the variances in remand rates. Board officials said that it is their perception that the remand rates vary among the Board's decision teams because the quality of claims processing varies among the regional offices for which each team is responsible.

Similar concerns about consistency of claims adjudication in the Social Security Administration (SSA) have prompted SSA to begin taking steps to assess consistency issues in its disability program. As we reported in 1997, SSA's primary effort to improve consistency has focused on decision-making variations between its initial and appellate levels.¹¹ To gather data on variations between these two levels, SSA instituted a system in 1993 under which it selects random samples of final decisions made by administrative law judges and reviews the entire decisional history of each case at both the initial and appellate levels. The reviewers examine adjudicative and procedural issues to address broad program issues such as whether a claim could have been allowed earlier in the process. Data captured through this system have provided a basis for taking steps to clarify decision-making instructions and provide training designed to

¹¹ U.S. General Accounting Office, *Social Security Disability: SSA Must Hold Itself Accountable for Continued Improvement in Decision-Making*, [GAO/HEHS-97-102](#) (Washington, D.C.: Aug. 12, 1997).

improve consistency between the initial and appellate levels. However, no systematic evaluations have been done to determine the effectiveness of these actions. In its January 2001 disability management plan, SSA said that it needed to take further steps to promote uniform and consistent disability decisions across all geographic and adjudicative levels.¹²

Conclusions

Opportunities exist to improve the quality of the Board's reporting of accuracy and decision making. The Board includes nonsubstantive deficiencies in its accuracy rate calculation. By doing so, the Board may be obscuring what is of real concern. In addition, the Board's quality assurance database does not capture data on specific medical disability issues related to the reasons for errors found in Board decisions. Also, in contrast with VBA, the Board's quality assurance program does not collect information on cases in which quality reviewers do not charge errors but have differences of opinion with judgments made by Board members. We believe that analysis of such data could lead to improvements in quality through improved training or by clarifying regulations, procedures, and policies.

Furthermore, because variations in decision making are to be expected due to the difficult judgments that adjudicators often must make, one must ask the questions: For a given medical condition, how much variation in decision making exists and does the degree of variation suggest that VA should take steps to reduce the level of variation? VA, however, does not assess variation in decision making. None of the quality review efforts of either VBA or the Board are designed to systematically assess the degree to which veterans with similar medical conditions and circumstances may be receiving different decisional outcomes or to help identify steps that could reduce such variation if necessary. Without ongoing systematic assessments of consistency across the continuum of decision making, VA cannot adequately assure veterans that they can reasonably expect to

¹² Since 1994, SSA has recognized the need to focus more attention on the agency's overall quality assurance program; however, SSA had made little progress in this effort as of early 2002. Since then, the Commissioner of SSA has appointed a senior manager for quality who reports directly to the Commissioner and who is responsible for developing a proposal to establish a quality-oriented approach to all SSA business processes. See U.S. General Accounting Office, *Social Security Disability: Disappointing Results from SSA's Efforts to Improve the Disability Claims Process Warrant Immediate Attention*, [GAO-02-322](#) (Washington, D.C.: Feb. 27, 2002) and *Social Security Disability: Efforts to Improve Claims Process Have Fallen Short and Further Action is Needed*, [GAO-02-826T](#) (Washington, D.C.: June 11, 2002).

receive consistent treatment of their claims across all decision-making levels in VA.

Recommendations for Executive Action

We recognize that our recommendations will have to be implemented within the context of VA's current major efforts to reduce a large and persistent backlog of disability claims and appeals and to reduce the average processing time. Nevertheless, we believe it is critical that VA take the necessary steps to support improvements in training and in regulations, procedures, or policies that could enhance the quality of disability decision making across the continuum of adjudication and to help provide adequate assurance to veterans that they will receive consistent and fair decisions as early as possible in the process. Indeed, maintaining and improving quality should be of paramount concern while implementing a major effort to reduce backlogs and processing time.

Accordingly, we recommend that the Secretary of VA direct the Chairman of the Board of Veterans' Appeals to:

- Revise the quality assurance program so that, similar to VBA, the calculation of accuracy rates will take into account only those deficiencies that would be expected to result in a reversal of a Board decision by the U.S. Court of Appeals for Veterans Claims or result in a remand by the court.
- Revise the Board's quality assurance program to record information in the quality review database that would enable the Board to systematically analyze case-specific medical disability issues related to specific errors found in Board decisions in the same way that the Board is able to analyze the reasons that the court remands Board decisions.
- Monitor the experience of VBA's quality assurance program in collecting and analyzing data on cases in which VBA's quality reviewers do not record errors but have differences of opinion with regional office adjudicators in the judgments made to reach a decision. If VBA finds that the analysis of such data helps identify training that can improve the quality of decision making, the Board should test such a process in its quality assurance program to assess whether it would enable the Board to identify training that could improve the quality of Board decisions.

We also recommend that the Secretary direct the Under Secretary for Benefits and the Chairman of the Board of Veterans' Appeals to jointly

establish a system to regularly assess and measure the degree of consistency across all levels of VA adjudication for specific medical conditions that require adjudicators to make difficult judgments. For example, VA could develop sets of hypothetical claims for specific medical issues, distribute such hypothetical claims to multiple adjudicators at all decision-making levels, and analyze variations in outcomes for each medical issue. Such a system should provide data to determine the degree of variation in decision making and provide a basis to identify ways, if considered necessary, to reduce such variation through training or clarifying and strengthening regulations, procedures, and policies. Such a system should also assess the effectiveness of actions taken to reduce variation. If departmental consistency reviews reveal any systematic differences among VA decision makers in the application of disability law, regulations, or court decisions, the Secretary should, to the extent that policy clarifications by VBA cannot resolve such differences, direct VA's General Counsel to resolve these differences through precedent legal opinions if possible.

Agency Comments and Our Evaluation

We received written comments on a draft of this report from VA (see app. III). In its comments, VA concurred fully or in principle with our recommendations. With regard to our first recommendation, VA said that the Board intends to revise its quality review system to count only substantive errors for computational and benchmarking purposes but will continue to track all errors. On the basis of VA's comments, we also modified the report to accurately reflect the standard of review employed by the U.S. Court of Appeals for Veterans Claims in reviewing Board decisions. With regard to our second recommendation, VA said that it would use its Veterans Appeals Control Locator System to gather information on case-specific medical disability issues related to specific errors found in Board decisions. VA questioned our basis for concluding that tracking such information will yield useful data for improving the adjudication system. As stated in the draft report, we based our recommendation on the fact that the Board has already concluded that such information is beneficial for analyzing the reasons for remands from the Court of Appeals for Veterans Claims. With regard to our third recommendation, VA said representatives of the Board and VBA will meet so that a system may be established for the Board to access and review VBA's methodology for assessing, reporting, and evaluating instances of "difference of opinion" between the quality reviewer and the decision maker.

In its comments, VA concurred in principle with our fourth recommendation. VA agreed that consistency is an important goal and acknowledged that it has work to do to achieve it. However, VA was silent on how it would measure consistency for specific medical conditions that require adjudicators to make difficult judgments. Instead, VA described the kinds of actions underway that it believes will generally reduce inconsistency. While we support these efforts, we maintain that without a way to evaluate and measure consistency, VA will be unable to determine the extent to which such efforts actually improve consistency of decision-making across all levels of VA adjudication now and over time. Neither will VA have information needed to identify ways to reduce decision-making variations for specific medical conditions, if considered necessary.

As agreed with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days after its issue date. At that time, we will send copies of this report to the Secretary of the Department of Veterans Affairs, appropriate congressional committees, and other interested parties. We will also make copies available to others upon request. In addition, the report will be available at no charge on the GAO Web site at <http://www.gao.gov>.

If you have questions about this report, please call me on (202) 512-7101 or Irene Chu on (202) 512-7102. Other key contributors were Ira Spears, Steve Morris, Patrick diBattista, and Mark Ramage.

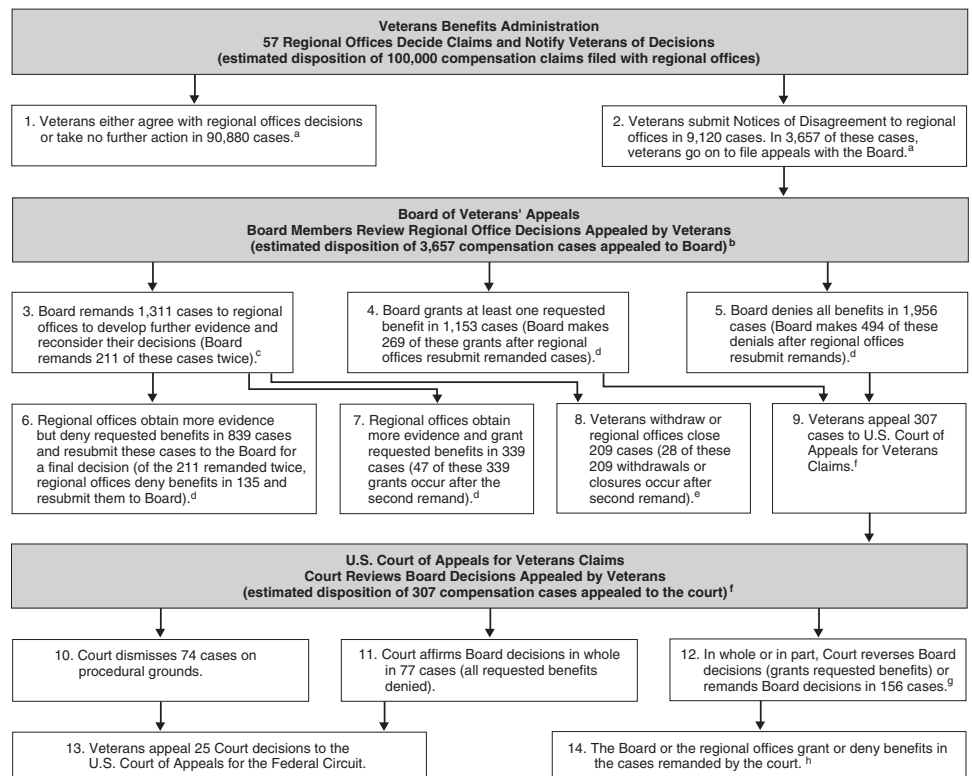
Sincerely yours,



Cynthia A. Bascetta
Director, Education, Workforce,
and Income Security Issues

Appendix I: Steps in the Disability Claims and Appeals Process

Illustration of the estimated disposition of 100,000 hypothetical compensation claims.



Note: We did not include claims and appeals data for fiscal year 2001 in the basis for estimating the disposition of the 100,000 cases because of anomalies related in whole or in part to the implementation of the Veterans Claims Assistance Act of 2000. These fiscal year 2001 anomalies included a substantial increase in the regional offices' inventory of claims to be completed and substantial increases in the proportion of appeals remanded by the Board and the Court. See U.S. General Accounting Office, *Veterans' Benefits: Despite Recent Improvements, Meeting Claims Processing Goals Will Be Challenging*, GAO-02-645T (Washington, D.C.: Apr. 26, 2002).

^aThe estimated disposition by VA's regional offices of the 100,000 claims (in boxes 1 and 2) is based on data for claims involving disability ratings for fiscal years 1997 to 2000. During those years, veterans submitted Notices of Disagreement in about 9 percent of the regional office decisions and went on to file appeals with the Board in about 40 percent of the cases in which they had submitted such notices.

^bDecisions appealed by veterans to the Board reach one of the following dispositions before veterans can appeal to the U.S. Court of Appeals for Veterans Claims: the Board makes an initial decision to grant or deny requested benefits (boxes 4 and 5); the regional office grants requested benefits in cases remanded by the Board for further development and reconsideration (box 7); the Board grants or denies benefits in remanded cases that regional offices resubmit to the Board because the regional offices denied the requested benefits after developing further evidence (boxes 4 and 5); the veteran withdraws his or her appeal while the case is in remand status at the regional office (box 8); or the regional office closes the case while in remand status because the veteran fails to respond to requests for information needed for the appeal to proceed (box 8). Therefore, the estimated disposition the 3,657 appealed cases is accounted for in boxes 4, 5, 7, and 8 (1,153 + 1,956 + 339 + 209 = 3,657).

Appendix I: Steps in the Disability Claims and Appeals Process

^cThe estimate of 1,311 remanded cases (in box 3) is based on Board data for fiscal years 1999 and 2000.

^dOn the basis of Board data for fiscal years 1999 and 2000, in its initial decisions on appealed compensation cases, the Board: (1) granted at least one of the requested benefits in about 24 percent of the cases, (2) denied all requested benefits in about 40 percent of the cases, and (3) remanded about 36 percent of the cases to regional offices for rework. After obtaining the additional evidence required by the Board for remanded cases, the regional offices granted requested benefits in about 22 percent of the remanded cases and denied requested benefits in 64 percent of the cases. After regional offices resubmitted denied cases to the Board for a final decision, the Board granted at least one of the requested benefits in about 26 percent of the cases, denied all benefits in about 49 percent, and remanded about 25 percent once again to regional offices for further rework. For this illustration, we assumed that the Board did not remand a case more than two times.

^eOn the basis of Board data for fiscal years 1999 and 2000, appellants withdrew about 13 percent of remanded compensation cases while at the regional offices, and the regional offices closed less than 1 percent of the remanded cases because appellants did not respond to requests for information needed to proceed with the appeal.

^fThe estimate of 307 cases appealed to the U.S. Court of Appeals for Veterans Claims (in box 9), the court's estimated disposition of these 307 cases (in boxes 10, 11, 12), and the estimated number of decisions appealed to the U.S. Court of Appeals for the Federal Circuit (in box 13) are based on fiscal years 1999 and 2000 data from the court's annual reports.

^gThe court's annual reports did not disaggregate data on reversals and remands. According to the Board, the court reversed Board decisions in whole or in part in only about 1.6 percent of the cases during fiscal years 1999 and 2000.

^hThe Board did not have any data that would provide a basis for estimating the number of grants and denials made by the Board or regional offices in cases remanded by the court (in box 14).

Source: Prepared by GAO using data from VBA, Board of Veterans' Appeals, and the U.S. Court of Appeals for Veterans Claims.

Appendix II: Board of Veterans' Appeals Illustrations of Difficult Judgments Resulting in Decision-Making Variations

| Adjudicator's task | Examples of difficult judgments |
|---|--|
| Assessing credibility of sources of evidence | To be granted benefits for post-traumatic stress disorder, a veteran's claim must have credible evidence that a stressor occurred during military service. Assume the record shows a claimant served in Vietnam as a supply specialist, and he identified mortar attacks as a stressor. Reports prepared by his military unit in Vietnam indicate a single enemy mortar attack occurred where the claimant was stationed. The claimant's testimony was vague about the number and the time of the attacks. One adjudicator may rely on the unit's reports and conclude the claimant engaged in combat and is entitled to have his lay statements accepted without further corroboration as satisfactory evidence of the in-service stressor. Another adjudicator may conclude that the claimant is not credible as to exposure to enemy fire and require other credible supporting evidence that the in-service stressor actually occurred. |
| Evaluating and assigning weight to evidence | Assume an appeal for either service connection or a higher disability rating has two conflicting medical opinions, one provided by a medical specialist who reviewed the claim file but did not actually examine the veteran and a second opinion provided by a medical generalist who reviewed the file and examined the veteran. One adjudicator could assign more weight to the specialist's opinion, while another could find the generalist's opinion to be more persuasive. Thus, depending on which medical opinion is given more weight, one adjudicator could grant the claim and the other deny it. Yet, a third adjudicator could find both opinions to be equally probative and conclude that VA's "benefit-of-the-doubt" rule requires that he decide in favor of the veteran's request for either service-connection or a higher disability rating. Under the benefit-of-the-doubt rule, if an adjudicator concludes that there is an approximate balance between the evidence for and the evidence against a veteran's claim, the adjudicator must decide in favor of the veteran. |
| Applying subjective standards in VA's Rating Schedule | <p>The Rating Schedule does not provide objective criteria for rating the degree to which certain spinal impairments limit a claimant's motion. The adjudicator must assess the evidence and draw a conclusion as to whether the limitation of motion falls into one of three severity categories: "slight, moderate, or severe." Similarly, in assessing the severity of incomplete paralysis, the adjudicator must draw a conclusion as to whether the veteran's incomplete paralysis falls into one of three severity categories: "mild, moderate, or severe." In each case, each severity category in itself encompasses a range of severity, and the judgment as to whether a claimant's condition is severe enough to cross over from one severity range into the next could vary in the minds of different adjudicators.</p> <p>The Rating Schedule provides a formula for rating the severity of a veteran's occupational and social impairment due to a variety of mental disorders. However, the formula actually is a nonquantitative, behaviorally oriented framework for guiding adjudicators in making judgments and drawing conclusions as to which of the following characterizations best describes the degree to which a claimant is occupationally and socially impaired: (1) totally impaired; (2) deficient in most areas such as work, school, family relations, judgment, thinking, or mood; (3) reduced reliability and productivity; (4) occasional decrease in work efficiency and intermittent periods of inability to perform occupational tasks; (5) mild or transient symptoms that decrease work efficiency and ability to perform occupational tasks only during periods of significant stress or symptoms can be controlled by continuous medication, and (6) not severe enough to interfere with occupational or social functioning or to require continuous medication.</p> |

Source: Board of Veterans' Appeals.

Appendix III: Comments from the Department of Veterans Affairs



THE SECRETARY OF VETERANS AFFAIRS
WASHINGTON

July 31, 2002

Ms. Cynthia A. Bascetta
Director, Veterans Health and Benefits Issues
Education, Workforce and Income Security Team
U. S. General Accounting Office
441 G Street, NW
Washington, DC 20548

Dear Ms. Bascetta:

The Department of Veterans Affairs (VA) has reviewed your draft report, **VETERANS' BENEFITS: Quality Assurance for Disability Claims and Appeals Processing Can Be Further Improved** (GAO-02-806). VA appreciates that the General Accounting Office (GAO) supports VA's efforts at maintaining and improving quality while implementing a major effort to reduce backlogs and processing time of benefits claims.

VA concurs with GAO's recommendations that the Board of Veterans' Appeals (BVA) (a) revise its calculation of accuracy, (b) revise its recording of data, and (c) monitor the Veterans Benefits Administration's (VBA) experience with recording data as to difference of opinion between the decision maker and the quality reviewer. VA also concurs in principle with GAO's recommendation to establish a system to regularly assess and measure the degree of consistency of adjudication decisions. The Department agrees consistency is an important goal. However, VA believes this is best achieved through comprehensive training and communication among VA's components involved in the adjudication process.

The enclosure provides detailed comments to each of GAO's recommendations. Thank you for the opportunity to comment on your draft report.

Sincerely yours,

Handwritten signature of Anthony J. Principi in black ink.
Anthony J. Principi

Enclosures

Enclosure

THE DEPARTMENT OF VETERANS AFFAIRS COMMENTS TO
GAO DRAFT REPORT, *VETERANS' BENEFITS: Quality Assurance for
Disability Claims and Appeals Processing Can Be Further Improved*
(GAO-02-806)

**GAO recommends that I direct the Chairman of the Board of Veterans'
Appeals to:**

- **Revise the quality assurance program so that, similar to VBA, the calculation of accuracy rates will take into account only those deficiencies that would be expected to result in a reversal of a Board decision by the U.S. Court of Appeals for Veterans Claims due to clear and unmistakable error or result in a remand by the Court.**

Concur in Principle - The Board intends to revise its quality review system to count only substantive errors for computational and benchmarking purposes, but continue to track all errors. It is considering excluding the category of "format" errors from the calculation of its accuracy rate, at least as an interim measure. On page 8 of its draft report, GAO cites this as raising BVA's accuracy rate for FY 2001 from 87 percent to 92 percent and providing a more useful assessment of BVA's decision accuracy. Since the Board has accumulated the underlying data for past years, it can recalculate past years' performance on this basis, and thereby continue to provide a solid basis for benchmarking BVA's quality.

However, the Court does not reverse the Board on the basis of clear and unmistakable error. As GAO's characterization of the standard of review by the Court is erroneous, VA cannot concur with the recommendation as stated.

- **Revise the Board's quality assurance program to record information in the quality review database that would enable the Board to systematically analyze case-specific medical disability issues related to specific errors found in Board decisions in the same way that the Board is able to analyze the reasons that the Court remands Board decisions.**

Concur - Implementing this recommendation would fall within the capabilities of VA's Veterans Appeals Control Locator System (VACOLS). In order to accomplish this, the Board will consult with IT staff to determine the technical feasibility of doing so and then develop a specific implementation plan. Nevertheless, VA questions the report's basis for concluding that such tracking will yield useful data for improvement of the adjudication system, as GAO provides no empirical data to support its assertion that this would be a valuable exercise.

Enclosure

THE DEPARTMENT OF VETERANS AFFAIRS COMMENTS TO
GAO DRAFT REPORT, *VETERANS' BENEFITS: Quality Assurance for
Disability Claims and Appeals Processing Can Be Further Improved*
(GAO-02-806)
(Continued)

- **Monitor the experience of VBA's quality assurance program in collecting and analyzing data on cases in which VBA's quality reviewers do not record errors but have differences of opinion with regional office adjudicators in the judgments made to reach a decision. If VBA finds that the analysis of such data helps identify training that can improve the quality of decision-making, the Board should test such a process in its quality assurance program to assess whether it would enable the Board to identify training that could improve the quality of Board decisions.**

Concur - Representatives of the Board and VBA will meet so that a system may be established for the Board to access and review VBA's methodology for assessing, reporting, and evaluating instances of "difference of opinion" between the quality reviewer and the decision maker.

GAO also recommends that I direct the Under Secretary for Benefits and the Chairman of the Board of Veterans' Appeals to jointly establish a system to regularly assess and measure the degree of consistency across all levels of VA adjudication for specific medical conditions that require adjudicators to make difficult judgments. For example, VA could develop sets of hypothetical claims for specific medical issues, distribute such hypothetical claims to multiple adjudicators at all decision-making levels, and analyze variations in outcomes for each medical issue. Such a system should provide data to determine the degree of variation in decision-making and provide a basis to identify ways, if considered necessary, to reduce such variation through training or clarifying and strengthening regulations, procedures, and policies. Such a system should also assess the effectiveness of actions taken to reduce variation. If departmental consistency reviews reveal any systematic differences among VA decision-makers in the application of disability law, regulations, or court decisions, the Secretary should, to the extent that policy clarifications by VBA cannot resolve such differences, direct VA's General Counsel to resolve these differences through precedent legal opinions if possible.

Enclosure

THE DEPARTMENT OF VETERANS AFFAIRS COMMENTS TO
GAO DRAFT REPORT, *VETERANS' BENEFITS: Quality Assurance for
Disability Claims and Appeals Processing Can Be Further Improved*
(GAO-02-806)
(Continued)

Concur in Principle - VA agrees that consistency is an important goal, and the Department has work to do to achieve it. However, VA believes improved consistency is best achieved by comprehensive training and communication among the VA components involved in the adjudication process. There are significant individual and joint training efforts underway in BVA, VBA, the Office of General Counsel, and the Veterans Health Administration to improve the quality and consistency of the adjudication process. For example, VBA is using the national Systematic Technical Accuracy Review (STAR) to promote quality and consistency. In the near future, VBA will conduct Systematic Individual Performance Assessments (SIPA) for all its employees. In addition, VBA's national training program, including its computer-based Training and Performance Support Systems (TPSS) program, provides a uniform approach toward training new employees. Finally, the creation of specialized teams in the Claims Processing Improvement (CPI) model, coupled with changes to the Rating Schedule, will undoubtedly provide more consistent decisions through repetition in dealing with specific medical conditions.

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