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OFFICE OF INSPECTOR GENERAL

Office of Audits and Evaluations

VETERANS BENEFITS ADMINISTRATION

Accuracy of Claims
Decisions Involving
Conditions of the Spine

REVIEW

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Executive Summary

According to Veterans Benefits Administration (VBA) data, approximately 1.5 million veterans have been granted service connection for disabilities involving the spine as of September 30, 2018.¹ Conditions related to the spine account for two of VA's top 10 most prevalent service-connected disabilities. The VA Office of Inspector General (OIG) identified that disability claims related to conditions of the spine are at a higher risk for processing errors, which can result in veterans not receiving the disability compensation benefits for which they are eligible.

This review sought to determine whether VBA staff accurately processed veterans' claims for conditions of the spine. It also sought to determine if VBA personnel were accurate in processing claims for secondary service-connected conditions related to the spine. A secondary condition is one that is caused by the primary service-connected condition. For example, veterans diagnosed with a condition of the spine often develop the secondary condition of nerve complications and symptoms such as numbness and tingling.

Properly processing secondary conditions is important because it can affect the amount of disability compensation the veteran receives. The Code of Federal Regulations (C.F.R.) states that if a secondary condition is the result of the primary service-connected disease or injury, it must be considered as part of the original condition for determining disability compensation benefits.²

What the Review Found

Based on a statistical sample, the OIG determined that VBA incorrectly processed more than half of the 62,500 veterans' claims decided from January 1 to June 30, 2018. Processing errors included improper evaluations, missed secondary conditions, and evaluations based on inadequate exams. Of the approximately 34,700 veteran claims that were incorrectly processed, about 5,000 resulted in inaccurate decisions for the veteran and inaccurate payments totaling at least \$5.9 million. The Office of Management and Budget (OMB) guidance classifies these types of inaccurate payments as improper payments. An improper payment is any payment that should not have been made or that was made in an incorrect amount, including both overpayments and underpayments.³ Of the 34,700 claims, about 29,800 veterans' claims contained processing errors that could have had a monetary effect on veterans, but the OIG could not determine a specific amount. For these claims with processing errors, VBA staff made a decision on the claims before completing all required evaluation steps. Because these complete reviews never

¹ *VBA Annual Benefits Report Fiscal Year 2018*.

² 38 C.F.R. 3.310(a). Disabilities that are proximately due to, or aggravated by, service-connected disease or injury.

³ OMB Circular A-123, Appendix C, *Requirements for Payment Integrity Improvement*, (June 26, 2018).

happened, the OIG team could not estimate the improper payments for 48 percent of the veterans' claims decided during the review period.

The OIG found that all incorrectly decided veteran claims resulted from VBA's inadequate process for ensuring accurate and complete evaluation. The disability rating schedule—the primary criteria for evaluating disability—contains minimal guidance on neurological and peripheral nerves. A procedures manual detailing the rating schedule is too subjective about peripheral nerve disability evaluations, which can lead to an inconsistent evaluation for a secondary service-connected condition.

For example, when VBA receives a claim for disability compensation benefits, a veterans service representative (VSR) reviews it and, if needed, requests a medical examination to determine the severity of a veteran's disability. The exam form asks the medical examiner if the secondary neurological complications are mild, moderate, or severe, but the medical examiners did not always choose disability levels that were consistent with documented symptom details from the exam. Examiners told the review team that VBA did not provide any guidance on the definition of these disability levels. In addition, they are VBA terms, not medical ones, and there are no standardized criteria for the examiners to determine severity. The same form also asks medical examiners to provide an opinion about whether the veteran's range of motion is limited during flare-ups or after repeated use. The medical examiner can decline to provide an opinion but if the medical examiner takes that route, a sufficient explanation is required. The VBA manual states the opinion may be insufficient if the conclusion is not adequately justified or implies a general lack of knowledge or an aversion to offering this statement on issues not directly observed.⁴ Most of the errors the OIG team identified did not have the required and sufficient explanation about why the examiner could not express an opinion.

Once the exam is completed, the rating veterans service representative (RVSR) inputs information from the medical exam into an Evaluation Builder tool to determine a disability level from 0 to 100 percent. However, the tool's section for peripheral nerve disabilities does not have a section for inputting specific exam information—the RVSRs simply select a disability level based on their own interpretation of the exam information. The VBA manual states that RVSRs are solely responsible for judging symptoms and their corresponding level of severity.⁵

The OIG team estimated that VA could pay an additional \$58.9 million in improper payments over the next five years unless VBA implements procedures to improve the decision-making process for veterans' claims for conditions of the spine. VBA needs to update its rating disabilities schedule and its procedures manual to establish objective criteria for spine-related

⁴ M21-1, Adjudication Procedures Manual, Part III, Subpart iv, Chapter 3, Section D, Topic 2, Block r: "Examiner Statements that an Opinion Would Be Speculative."

⁵ M21-1, Adjudication Procedures Manual, Part III, Subpart iv, Chapter 4, Section N, Topic 4. Block d: "Considering the Complete Findings When Evaluating Incomplete Paralysis."

conditions. Also, VBA should improve its internal controls to help ensure the accuracy and consistency of claims decisions for conditions of the spine.

During the course of this review, VBA acknowledged that the issues the OIG identified were problematic and has taken steps to update some of its tools and guidance. VBA has also initiated mandatory training on medical opinion requirements for all RVSRs and quality reviewers.

What the OIG Recommended

The OIG recommended that the under secretary for benefits conduct a focused analysis to assess the accuracy of claims processors seeking clarification on exams and develop a plan to update the rating schedule, procedures manual, and disability benefits questionnaire forms for conditions of the spine. VBA should also review and update the Evaluation Builder tool.

Management Comments

The under secretary for benefits concurred with the recommendations and provided acceptable action plans. The OIG will monitor VBA's progress and follow up on implementation of the recommendations until all proposed actions are completed.

The under secretary took exception to the OIG's practice of estimating the monetary impact of not implementing the recommendations. The OIG uses a five-year estimate to emphasize the importance of taking corrective actions and to highlight the potential magnitude of identified issues if such actions are delayed or never implemented. The OIG acknowledges that the actual future monetary impact will vary because events, rates of payment, available monetary benefits, and circumstances may change. However, that variance is usually largely dependent on if, when, and how VBA implements its corrective actions.



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Abbreviations

C.F.R.	Code of Federal Regulations
DBQ	disability benefits questionnaire
FY	fiscal year
OFO	Office of Field Operations
OIG	Office of Inspector General
OMB	Office of Management and Budget
RVSR	rating veterans service representative
VARO	VA regional office
VBA	Veterans Benefits Administration
VHA	Veterans Health Administration
VSR	veterans service representative



Introduction

Objective

This review sought to determine whether Veterans Benefits Administration (VBA) staff accurately processed veterans' disability compensation claims for conditions of the spine suffered by veterans, including secondary service-connected conditions, in accordance with the VBA procedures manual.⁶

Why the OIG Did This Review

Conditions involving the spine account for two of the top 10 veterans' service-connected disabilities—lower back or neck strain and degenerative arthritis (see Table 1). According to VBA, approximately 1.5 million veterans have service-connected disabilities involving the spine as of September 30, 2018.⁷ The VA Office of Inspector General (OIG) determined there is a high risk for processing errors on these claims. Making accurate decisions on these claims is vital to ensuring veterans receive the disability compensation benefits for which they are eligible.

Table 1. Most Prevalent Service-Connected Disabilities

Ranking	Disability	Number of recipients
1	Tinnitus	1,971,201
2	Hearing loss	1,228,936
3	Posttraumatic stress disorder	1,039,794
4	Scars, general	1,036,677
5	Limitation of flexion, knee	1,021,281
6	Lumbosacral or cervical strain	989,835
7	Paralysis of the sciatic nerve	781,178
8	Limitation of motion of the ankle	636,853
9	Migraine	548,999

⁶ M21-1, Adjudication Procedures Manual.

⁷ Does not include secondary neurological complications of the spine. See *VBA Annual Benefits Report Fiscal Year 2018*.

Ranking	Disability	Number of recipients
10	Degenerative arthritis of the spine	505,553

Source: VBA Annual Benefits Report Fiscal Year 2018

Disability Compensation Benefits and Secondary Conditions

Disability compensation is a tax-free monetary benefit paid to veterans with disabilities that are the result of a disease or injury incurred or aggravated during active military service. Direct service connection requires

- Evidence of an event, injury, or disease in service;
- Evidence of a current disability; and
- A link establishing that the current disability started in or was caused by time in service.

For service connection of a secondary condition, the law states that, generally, when a disability is because of a service-connected disease or injury, the secondary disability is considered a part of the original condition.⁸ For example, conditions of the spine often lead to nerve complications such as numbness and tingling in the arms and legs. This type of secondary condition should be considered as part of the veterans’ primary claim. Evaluations for conditions of the spine range from 0 to 100 percent disabling, due to factors such as pain and limitation of motion. Monthly compensation for these conditions can be up to approximately \$3,057 for a 100 percent evaluation, with additional compensation if the veteran is married or has children.

VBA Disability Claims Process

When a veteran submits the first claim for a specific condition, veterans service representatives (VSRs) complete all the initial disability claims processing actions by determining what evidence is required to support the claim based on the criteria for service connection. To establish the in-service event or injury, the VSR will obtain appropriate service records. For a current disability, the VSR will request any pertinent private and federal medical records. If deemed necessary, the VSR will request a VA medical exam to determine the current diagnosis, severity, and medical opinion establishing the link to service. For a claim for an increased disability evaluation when service connection has already been established—such as when a condition worsens, or a higher evaluation is sought—the VSR requests any medical records the veteran identified and determines if a medical exam is necessary.

⁸ 38 C.F.R. 3.310(a). Disabilities that are proximately due to, or aggravated by, service-connected disease or injury.

When the VSR determines a medical exam is required in either case, they request an exam. The examiner completes a disability benefits questionnaire (DBQ) form, which is a standardized exam form that gathers pertinent medical information VBA needs for evaluating veterans' disabilities. Each DBQ is specific to a body system and disability. For example, there are two DBQ forms for conditions of the spine—the Neck (Cervical Spine) Conditions DBQ, and the Back (Thoracolumbar Spine) Conditions DBQ. A medical examiner is responsible for reviewing the evidence identified by the VSR, examining the veteran, and completing the DBQ form.⁹

Rating veterans service representatives (RVSRs) are VBA employees who have the authority to make formal decisions on veterans' disability compensation claims. Before RVSRs can decide a veteran's claim, they must ensure that all required claims processing actions have been completed. The RVSR should review the DBQ form, if provided, to ensure VBA received all required information needed to decide the claim. If the RVSR determines that the exam report is insufficient, the RVSR should send the report back to the medical examiner for clarification. The RVSR uses the DBQ form to enter disability-pertinent exam findings into the Evaluation Builder tool. This disability evaluation tool is designed to provide consistency in disability evaluations and recommend language to explain to the veteran how decisions were made.

Disability claims processing generally occurs in four phases, as outlined in Figure 1.

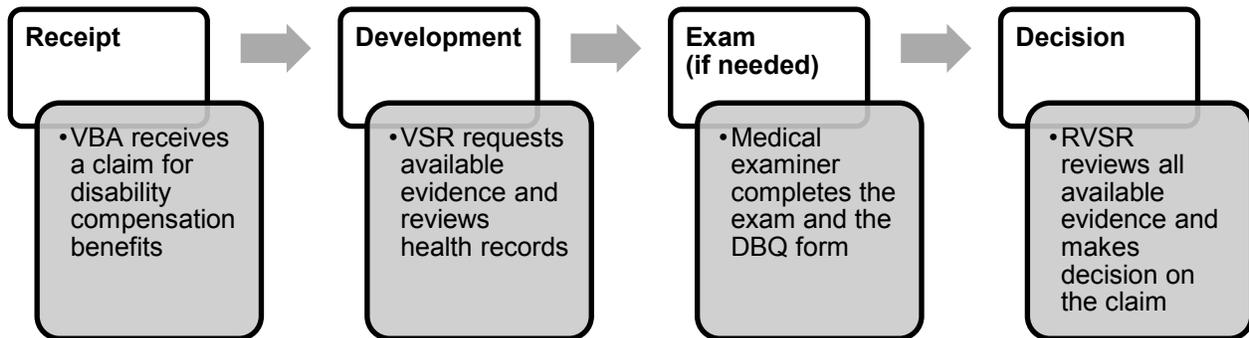


Figure 1. VBA disability compensation claims process
 Source: Developed by OIG

VBA Program Offices

VBA's Compensation Service and Office of Field Operations (OFO) are primarily responsible for the oversight, management, and delivery of disability compensation benefits.

The Compensation Service oversees the delivery of disability compensation and is responsible for

⁹ A medical examiner can be a physician, physician's assistant, nurse practitioner, or other authorized individual.

- Developing and updating procedural guidance regarding initiatives and laws governing VBA compensation benefits;
- Developing, facilitating, and overseeing training for VBA employees involved in processing veterans' compensation claims;
- Controlling and overseeing VBA's national quality assurance reviews of compensation claims processing;
- Facilitating and monitoring contracts to obtain medical disability exams;
- Developing, maintaining, and updating the DBQ forms; and
- Monitoring the quality and accuracy of contract medical exams and providing guidance to the contract medical examiners who perform exams when needed.¹⁰

The OFO oversees operations at VBA's district offices, VAROs, and other field offices to ensure that VBA delivers benefits and services in an effective and efficient manner. Furthermore, the OFO is responsible for

- Developing achievable performance measures that ensure timeliness, quality, and consistency of benefits; and
- Evaluating the performance of VAROs and other field offices.

¹⁰ VA exams may be completed by contract providers or Veterans Health Administration (VHA) providers. VHA's Office of Disability and Medical Assessment is responsible for providing policy, training, and assistance to VHA providers and reviewing the quality of these exams.

Results and Recommendations

Finding: VBA Had Deficiencies in Processing Veterans' Claims for Conditions of the Spine

The OIG team estimated that VBA staff incorrectly processed about 34,700 of 62,500 veterans' disability compensation claims (56 percent) for conditions of the spine decided during the review period from January 1, 2018, through June 30, 2018.¹¹ The team identified errors in two different categories:

- About 5,000 errors involved disability claims that VBA decided incorrectly and that affected veterans' compensation benefits payments. These errors resulted in inaccurate payments of at least \$5.9 million.¹²
- About 29,800 errors involved disability claims that had the potential to affect veterans' compensation benefits payments because RVSRs made decisions before completing all required VBA procedures as set out in the adjudication procedures manual, such as returning medical exams to obtain clarification when needed. In these cases, the team could not determine the specific monetary impact of the errors. Had RVSRs completed all required actions, it could have led to a different decision.

Office of Management and Budget (OMB) guidance classifies the inaccurate payments resulting from these errors as improper payments. An improper payment is any payment that should not have been made or that was made in an incorrect amount. Improper payments include both overpayments and underpayments.¹³ The review team estimated from this six-month sample that if VBA staff continue to make errors at the rate identified and at payment rates in effect at the time of this review, VBA could make an estimated minimum of \$58.9 million in improper payments over a five-year period. However, if VBA implements the review team's recommendations, it could improve the accuracy of these decisions.¹⁴ The team determined that errors occurred because VBA needs to update the VA Rating Disabilities schedule and its procedures manual to make them more objective. In addition, VBA should improve its internal controls—such as updating the DBQ forms and the Evaluation Builder tool—to help ensure the accuracy and consistency of disability claims decisions for conditions of the spine.

¹¹ The numbers of errors affecting veterans' benefit payments and number of errors that had the potential to affect veterans' benefit payments do not add up to the total errors due to rounding. See Appendix C for actual numbers.

¹² OMB Circular A-123, Appendix C, *Requirements for Payment Integrity Improvement*, (June 26, 2018).

¹³ OMB Circular A-123, Appendix C, *Requirements for Payment Integrity Improvement*, (June 26, 2018).

¹⁴ Appendix A provides more details on the statistical sampling and projection methodology.

What the OIG Did

This review covered 18,952 initial disability compensation claims, as well as 45,378 subsequent claims involving conditions of the spine that were decided during the review period.¹⁵ The OIG team reviewed a statistical sample of 150 original claims and 150 claims for an increase in disability compensation to determine whether VBA staff accurately processed the claims, including secondary conditions.¹⁶ The team used VBA's electronic systems, including the Veterans Benefits Management System, to review the sampled veteran claims folders and relevant required documentation for each claim. The team discussed the claims reviews with VBA officials and included their comments in the report as appropriate. The team performed site visits at the Muskogee, Oklahoma, and St. Petersburg, Florida, VA regional offices (VAROs). In addition, the team conducted site visits at three VA medical centers (Muskogee, Oklahoma, as well as Tampa and Bay Pines, Florida) to discuss these issues with VA medical examiners.

This section discusses the following considerations that support the OIG's finding:

- Some processing errors affected veterans' compensation benefits payments.
- Other processing errors had the potential to affect veterans' compensation benefits payments.
- There were multiple causes of disability compensation claims processing errors.

Some Processing Errors Affected Veterans' Benefits Payments

The OIG team determined that VBA staff incorrectly decided 33 of 300 veterans' disability compensation claims during the review period that affected veterans' compensation benefits payments. The OIG calculated the specific payment error amount from the effective date of the incorrect decision through December 1, 2018. Specifically, the review team identified, and VBA agreed, there were

- Twenty-seven cases in which errors led to veterans being underpaid by a total of about \$115,916, and
- Six cases in which errors led to veterans being overpaid by a total of about \$19,227.

¹⁵ For the purposes of this review an initial or original claim is considered the first claim a veteran submits for VA disability compensation benefits that included a spine-related condition that was granted service connection. A subsequent claim for increased evaluation relates to a previously established service-connected spine-related condition.

¹⁶ For each of the four strata, 75 claims were selected. The samples were selected randomly within each stratum using SAS software. This sampling design ensures that projections can be made about the entire population. Appendix A provides additional details on the statistical sampling and methodology.

Examples 1 and 2 illustrate how claims processing errors led to underpaying veterans. Example 1 illustrates the need for VBA to update the rating schedule and procedures manual to include more objective, measurable criteria. In addition, if VBA updates the peripheral nerve Evaluation Builder tool it may help improve the accuracy and completeness of claims decisions for conditions of the spine.

Example 1: Under-Evaluation of Peripheral Nerves

An Army veteran filed a claim for a lower back condition and described related physical impairments. The medical examiner diagnosed the back condition and documented the veteran's symptoms of pain, numbness, leg weakness, and diminished reflexes for each leg. The RVSR rated the level of severity as mild, but the OIG determined these symptoms warranted a moderate evaluation. VBA agreed with the OIG assessment that this decision was in error. As a result, the veteran was underpaid approximately \$3,800 since the effective date of the incorrect decision and will continue to be underpaid more than \$550 monthly until corrected.¹⁷

Example 2 illustrates the need for VBA to update the Evaluation Builder tool to prompt RVSRs to address all secondary or associated conditions as part of the original claim.

Example 2: Missed Secondary Issue

Current law states that disabilities related to a service-connected condition should be considered a service-connected secondary condition. Furthermore, when a secondary condition is related to a service-connected disability, the secondary condition should be considered and decided as part of the original claim.¹⁸ An Army veteran filed a claim for degenerative disc disease of the cervical spine. During the review process, the medical examiner also diagnosed secondary conditions of degenerative arthritis, spinal stenosis, and vertebral fracture, as well as nerve complications in both arms. The examiner provided a medical opinion linking the cervical spine condition to the veteran's military service. The RVSR granted service connection for the original cervical spine condition as 10 percent disabling but did not address and grant service connection for the secondary conditions, as required. As a result, the veteran was underpaid about \$5,750 since the effective date of the incorrect decision. VBA agreed with the OIG team's assessment of this error and has taken corrective action.

¹⁷ The monthly amount is calculated based on the rate as of December 1, 2018.

¹⁸ 38 C.F.R. 3.310.

The OIG team identified claims in which service connection was granted in error or the evaluation assigned was not supported by the medical evidence. This caused veterans to be paid compensation benefits they were not otherwise entitled to receive. Example 3 demonstrates how a processing error led to a veteran being overpaid. It also indicates the need for VBA to update the rating schedule, procedures manual, and Evaluation Builder tool to improve the accuracy of claims decisions.

Example 3: Over-Evaluation of Peripheral Nerves

An Air Force veteran filed a claim for an increased disability evaluation, which has the potential to increase compensation benefits, and the medical examiner noted secondary nerve complications on the exam report. The examiner noted mild but similar symptoms on both legs, yet the examiner assessed one leg as moderate and the other as mild. The VBA procedures manual states that the RVSR has the sole responsibility of assessing the level of severity, and the RVSR incorrectly used the examiner's level of moderate for one side even when the evidence only supported a mild evaluation. VBA agreed with the OIG team's assessment that this decision was in error. As a result, the veteran was overpaid approximately \$2,900 since the effective date of the incorrect decision and will continue to be overpaid more than \$275 monthly until corrected.

Other Processing Errors Had the Potential to Affect Veterans' Benefits Payments

During the review period, the OIG team determined and VBA agreed that staff incorrectly decided 138 of 300 veterans' disability compensation claims that had the potential to affect veterans' compensation benefits payments. Based on this sample, the team estimated that VBA staff incorrectly decided about 29,800 claims during the review period that had a potential monetary effect on veterans. In these cases, the team could not determine the specific monetary impact of the errors, if any, because RVSRs made decisions before completing all requirements from the VBA procedures manual. Had the RVSRs completed all required steps prior to making a decision, it could have led to evidence that warranted higher disability ratings for veterans.

The United States Court of Appeals for Veterans Claims has exclusive jurisdiction to review final decisions by the Board of Veterans' Appeals.¹⁹ Since 2010, the court has made several decisions about medical exam opinions and statements affecting VBA's claims processing.²⁰ Specifically, a September 2017 court ruling requires examiners to do all that reasonably should

¹⁹ 38 C.F.R. 7252(a).

²⁰ For details on decisions rendered by the United States Court of Appeals for Veterans Claims, see Appendix B.

be done to become informed about a case before concluding that a requested opinion cannot be provided without resorting to mere speculation.²¹ In addition, VBA's procedures manual requires RVSRs to seek clarification when the medical examiner does not provide an opinion regarding a veteran's functional limitations without including an adequate explanation for not providing that opinion.²² The majority of potential monetary effect errors the OIG team identified were the result of RVSRs not seeking clarification on exams to comply with the requirements set forth by recent court decisions and the procedures manual.

Example 4 summarizes a case in which an RVSR made a decision on a veteran's claim before completing all requirements set forth by the court and VBA's procedures manual. As a result, this error had the potential to affect the veteran's compensation benefits payments. Example 4 also illustrates the need for VBA to update the DBQ form to instruct medical examiners to provide detailed explanations of the evidence that supports range of motion opinions.

Example 4: Examiner Did Not Provide an Adequate Opinion

An Army veteran filed a claim for neck pain. One of the reported functional limitations was morning neck stiffness. The veteran said stretching helped ease the tension, but full head-turning was hard due to the pain during flare-ups. The court and the VBA procedures manual require the examiner to either estimate the range of motion based on the veteran's description or adequately explain why an estimate was not possible. The examiner reported an estimate for the veteran's range of motion limitations during flare-ups was not possible because the veteran was "not seen" during a flare-up. The manual guidance addresses this, stating the examiner must address functional limitation based on the veteran's history and the examiner's clinical judgement. The manual guidance further states the exam should be returned for clarification when the examiner avoids expressing an opinion on matters they do not observe. Nonetheless, the RVSR rated the claim based on the insufficient exam opinion. The RVSR should have returned the exam report to the medical provider to obtain further clarification. Had the RVSR taken this action, the veteran may have received medical evidence to support a higher disability evaluation and increased monthly payments. VBA agreed with the OIG team's assessment that this decision was in error.

Recommendation 1 addresses the need for VBA to implement a plan to conduct a focused analysis of claims processor compliance with the requirements set forth by recent court decisions regarding examiner opinions and develop a plan to review and take corrective action on affected claims if deemed necessary, based on the results of that review.

²¹ Sharp v. Shulkin, 29 Vet.App. 26 (Sept. 6, 2017).

²² M21-1, Part III, Subpart iv, Chapter 3, Section D, Topic 2, Block r.

Multiple Causes of Claims Processing Errors

The OIG team determined that VBA did not implement adequate controls to ensure the accuracy and completeness of disability compensation claim decisions. Multiple internal control deficiencies contributed to VBA staff incorrectly processing a projected 34,700 claims for conditions of the spine (56 percent) decided during the six-month review period.

VBA Rating Schedule Needs Updating

The rating schedule is drawn directly from federal law and is the primary criteria for evaluating a disability due to various diseases and injuries resulting from military service.²³ It contains general policy for rating, with distinct sections for each body system. For spine-related disabilities, the schedule includes specific criteria for what objective and subjective symptoms indicate the level of severity.²⁴ For example, the spine can be evaluated based on specific objective measures, such as limitations of motion and muscle spasms. The rating schedule also considers subjective factors, such as pain and painful motion.²⁵

For peripheral nerves, subjective neurological symptoms are a personal description of the location, character, and intensity of dull, sharp, or achy pain. Objective findings are symptoms perceptible to the examining physician. They are measurable, quantifiable, and include changes in reflexes and/or muscle strength and location and distribution of diminished sensation to the skin. The rating schedule only includes minimal guidance for neurological conditions, specifically peripheral nerves. For instance, if the only nerve symptoms are diminished or absent feeling (sensory only), the evaluation cannot be above moderate.²⁶

Secondary neurological conditions often accompany disabilities of the spine, with symptoms such as numbness, tingling, and muscle weakness in the arms and legs. The rating schedule does not contain objective measurable criteria for these secondary neurological complications at each level of disability, which can lead to inconsistent evaluations. VBA quality reviewers told the OIG team that because the rating schedule is so subjective, they rarely identified errors on peripheral nerve evaluations. VBA quality reviewers recommended changes to the rating schedule to provide more specific and objective criteria.

Recommendation 2 addresses the need for VBA to develop a plan to update the rating schedule to establish more objective criteria for each level of evaluation for peripheral nerves.

²³ 38 C.F.R. *Pensions, Bonuses, and Veterans' Relief*, Part 4 – “Schedule for Rating Disabilities.”

²⁴ 38 C.F.R. 4.71a. “Schedule of ratings-musculoskeletal system.”

²⁵ 38 C.F.R. 4.71a.

²⁶ 38 C.F.R. 4.123. “Neuritis, cranial or peripheral;” 4.124 “Neuralgia, cranial or peripheral;” and 4.124a “Schedule of ratings-neurological conditions and convulsive disorders.”

Procedures Manual Contains Subjectivity

VBA updates the procedures manual whenever changes are made to the rating schedule. VBA can also update the manual as rating schedule changes are planned and still being implemented, which sometimes takes years. Although the VBA procedures manual contains clear requirements for spine evaluations based on objective and measurable evidence, such as limitations with regards to range of motion, the manual contains some subjectivity regarding peripheral nerve disability evaluations.²⁷

For example, the manual provides the following definitions of nerve impairment:

- **Mild:** “As this is the lowest level of evaluation for each nerve this is the default assigned based on the symptoms, however slight, as long as they were sufficient to support a diagnosis of the peripheral nerve impairment.” The manual continues, “In general look for a disability limited to sensory deficits that are *lower graded, less persistent, or affecting a small area*. A very *minimal* reflex or motor abnormality *potentially could* also be consistent with mild incomplete paralysis” (emphasis added).
- **Moderate:** “The maximum evaluation reserved for the most significant cases of sensory-only impairment.” The manual continues, “Symptoms will *likely* be described by the claimants and *medically graded as significantly disabling*. In such cases a larger area in the nerve distribution may be affected by sensory symptoms. Other sign/symptom combinations that may fall into the moderate category include combinations of *significant* sensory changes and reflex or motor changes of a *lower degree*, or motor and/or reflex impairment such as weakness or diminished or hyperactive reflexes (with or without sensory impairment) graded as *medically moderate*” (emphasis added).
- **Severe:** “In general, expect motor and/or reflex impairment (for example, atrophy, weakness, or diminished or hyperactive reflexes) *at a grade reflecting a very high level of limitation or disability*” (emphasis added).

The manual does not define or explain the terms in italics. It also does not provide the specific severity of symptoms required to meet each level of disability (mild, moderate, or severe), and instead states that the RVSR is solely responsible for judging the appropriate level.

Processing errors relating to peripheral nerve evaluations, as explained in Examples 1 and 3, were significant enough that the OIG team used existing procedural manual guidance to identify these as errors and VBA agreed with that assessment. However, quality reviewers responded they routinely encounter scenarios where they disagree with the evaluation rendered for

²⁷ M21-1, Part III, Subpart iv, Chapter 4, Section A, Topic 5, Block a: “Evaluating Manifestations of Spine Diseases and Injuries,” and M21-1, Part III, Subpart iv, Chapter 4, Section N, Topic 4, Block c: “Assigning Level of Incomplete Paralysis, Neuritis, or Neuralgia.”

peripheral nerve complications but may not necessarily categorize the assigned evaluation as an error. Quality reviewers also stated that the procedures manual provides more guidance than the rating schedule, which has helped to eliminate extreme decisions, but since the rating schedule doesn't provide any guidance it is difficult to identify errors in these situations. Nerve evaluations remain very broad and subjective in rating.

Recommendation 3 addresses the need for VBA to review all sections of the procedures manual related to peripheral nerve disability evaluations and develop a plan to make updates and clarifications where applicable.

Issues with DBQ Forms

VSRs have the primary responsibility for determining if a medical exam is necessary for initial disability compensation claims and claims for increased evaluation.²⁸ If an examination is necessary, the VSR orders the exam using the Exam Request Builder. The Exam Request Builder is a tool to standardize the format for exam requests, reduce the amount of time spent developing examination and medical opinion requests, and ensure that all necessary information is included in a clear and concise format. The VSR requests exams, which are documented on DBQ forms used to elicit medical information needed to make decisions on claims and provide a standardized report format for medical examinations and opinions. There are two DBQ forms for the spine containing sections that pertain to the specific anatomical area, as well as potential related neurological complications.²⁹ Even though it is solely the RVSR's responsibility to determine the appropriate level of neurological severity, these DBQ forms include a question for the medical examiners to select mild, moderate, or severe for the veteran's level of disability for secondary nerve issues. Medical examiners told the OIG team that VBA had not provided—and the DBQ forms did not include—adequate guidance for making this determination. One examiner stated that this determination was very “provider-specific,” or inconsistent, while another commented there is no standard criteria to determine severity and it is very subjective.

The OIG team observed cases for which examiners provided conflicting information regarding nerve issues. For example, the examiner may have selected the severity level of moderate when the details of the exam only documented mild symptoms. Despite this, RVSRs reported they tended to accept the examiners' level of disability for secondary peripheral nerve impairment. Examiners told the review team VBA did not provide any guidance on the definition of these disability levels; they are VBA terms, not medical ones, and there are no standard criteria for the examiners to determine severity. The OIG team concluded that the DBQ forms should not require examiners to select mild, moderate, or severe for the veteran's level of disability for

²⁸ M21-1, Part III, Subpart iv, Chapter 3, Section A, Topic 1, Block a: “Who May Request an Examination.”

²⁹ Neck (Cervical Spine) Conditions DBQ, (March 2018), and Back (Thoracolumbar Spine) Conditions DBQ (December 2017).

secondary peripheral nerve impairment because it adds no clinical value and can lead to inconsistent evaluations. VBA's director of Compensation Service told the OIG team they have discussed rewriting the neurological section of the spine DBQs to eliminate the examiners' severity statement of mild, moderate, or severe.

The OIG team also observed spine exam reports that identified abnormal findings without a diagnosis or explanation from the examiner. For example, a DBQ noted evidence of impaired muscle strength and abnormal reflexes in the leg, but the examiner did not diagnose a neurological condition. The exam was not returned to the medical examiner for clarification on these findings. The OIG team concluded the DBQ forms should be updated to require the medical examiner directly address and explain the likely cause of any abnormal neurological findings or notable symptoms.

Finally, the DBQ forms ask the examiner if pain, weakness, fatigability, or incoordination significantly limit functional ability with flare-ups and after repeated use. If so, examiners are directed to describe limitations in terms of additional loss of range of motion. If examiners are unable to estimate this additional loss without resorting to mere speculation, they are required to explain why additional loss of range of motion cannot be described. If examiners are unable to provide a statement regarding additional loss of range of motion during flare-ups or after repeated use over time without resorting to speculation, they must also provide a detailed explanation for this statement. The statement must be based on all available information, including the veteran's testimony on examination, case-specific evidence from medical treatment records when applicable, and the examiners' medical expertise. The VBA manual states the opinion may be insufficient if the conclusion is not adequately justified or implies a general lack of knowledge or an aversion to offering this statement on issues not directly observed.³⁰ The majority of the errors the OIG team identified were related to cases for which claims processors failed to return exam reports for clarification when the examiner failed to provide this opinion or provided an opinion without adequate explanation. Therefore, the OIG team concluded the DBQ forms should be updated with instructions to medical examiners to provide detailed explanations of the evidence reviewed that support their range of motion opinions.

Recommendation 4 addresses the need for VBA to review the DBQ forms for conditions of the spine and determine whether updates are needed to help ensure more accurate and consistent claims decisions.

³⁰ M21-1, Part III, Subpart iv, Chapter 3, Section D, Topic 2, Block r.

Evaluation Builder Tool Needs Improvement

Once the examiner completes the DBQ form, an RVSR must review it to ensure it is complete and all necessary information is included to decide the veteran's claim.³¹ If the exam is sufficient, RVSRs use the Evaluation Builder tool to input specific disability symptoms or findings from the DBQ and generate a suggested degree of disability, as well as consistent language explaining how the decision was made. Use of the Evaluation Builder is mandatory, and the narrative language it provides must be included in the rating decision. There is a specific Evaluation Builder for each body system.

The Evaluation Builder for claims involving conditions of the spine includes data fields for RVSRs to generate a consistent level of disability, but the Evaluation Builder for peripheral nerves does not allow RVSRs to input specific exam findings—only the selection of mild, moderate, or severe based on their interpretation of the exam information. The OIG team concluded that updating the Evaluation Builder tool to include objective evidence identified during exams, such as muscle strength and reflex testing, could lead to more accurate and consistent claims decisions. In addition, the team determined that the tool should include a check box for associated neurological complications. When checked, this would require the RVSR to address the secondary neurological conditions.

In addition, the procedural manual directs the RVSR to consider that personal reports of painful motion and/or an actually painful joint can be the basis for a compensable evaluation.³² However, the OIG team determined RVSRs did not always assign a compensable evaluation on this basis. The team concluded that the Evaluation Builder tool for spine conditions could be updated to include an additional check box requiring RVSRs to note when there are subjective reports of pain or painful motion.

Recommendation 5 addresses the need for VBA to update the Evaluation Builder tool to help users provide more accurate, comprehensive, and consistent information for claims decisions involving the spine and peripheral nerves.

Steps Taken by VBA During the OIG Review

During the course of this review, VBA acknowledged that the issues the OIG identified were problematic and has taken steps to update some of its tools and guidance to help comply with relevant court decisions. VBA clarified the instructions to examiners within the exam requests in

³¹ M21-1, Part III, Subpart iv, Chapter 3, Section D, Topic 3, Block a: "Insufficient Examination Reports." Note that an examination report submitted to an RVSR must be as complete as possible and any missing required information makes the exam report insufficient.

³² M21-1, Part III, Subpart iv, Chapter 4, Section A, Topic 1, Block a: "Establishing the Minimum Compensable Evaluation Under 38 CFR 4.59."

March and April 2019, explaining the requirements for a statement on whether pain could significantly limit functional ability during flare-ups or after repeated use. In addition, VBA issued further clarification regarding the acceptability of examiner opinions. VBA leaders initiated mandatory training on medical opinion requirements to be completed by all RVSRs and quality reviewers by March 31, 2019.³³ The OIG team acknowledged this action and determined that VBA should follow up to ensure compliance with the updates to the procedural manual, as well as the completion of the required training.

Conclusion

VBA's *Annual Benefits Report Fiscal Year 2018* (most recent available) indicates "lumbosacral or cervical strain" is the fourth most prevalent service-connected disability for new compensation, with over 71,000 new benefit recipients from October 2017 through September 30, 2018. Cumulative reports show approximately 990,000 veterans are currently receiving compensation for lumbosacral or cervical strain, and about 506,000 veterans are receiving compensation for degenerative arthritis of the spine. These large numbers of potentially affected veterans underscore the critical importance of ensuring consistently accurate spine-related disability compensation claims decisions.

Based on its review, the OIG team projected VBA has issued improper payments for an estimated 8 percent of disability compensation benefit claims involving conditions of the spine, with the possibility that 48 percent more of the claims also resulted in improper payments—both under- and overpayments. These errors were caused by incomplete processing, vague guidance, subjective evaluation processes, and issues with evaluation tools.

Over the next five years these issues will cost VBA an estimated minimum of \$58.9 million in improper payments if changes are not made—or even higher, since the OIG could not determine how much would be saved or spent if all compensation claims underwent the full evaluation process.

Recommendations 1–5

The OIG recommends that the under secretary for benefits complete the following:

1. Implement a plan to conduct a focused analysis of claims processor compliance with the requirements set forth by recent court decisions regarding examiner opinions and formulate a plan to review and take corrective action on affected claims if deemed necessary based on the results of that review.

³³ VBA reported that as of May 31, 2019, this training was 94 percent complete and they were following up with the remaining RVSRs to complete it as well.

2. Develop a plan to update the rating schedule to establish more objective criteria for each level of evaluation for peripheral nerves.
3. Review all sections of the procedures manual related to peripheral nerve disability evaluations and develop a plan to make updates and clarifications where applicable.
4. Review the disability benefits questionnaire forms for conditions of the spine and determine whether updates are needed to help ensure more accurate and consistent claims decisions.
5. Update the Evaluation Builder tool to help users provide more accurate, comprehensive, and consistent information for claims decisions involving the spine and peripheral nerves.

Management Comments and OIG Response

The under secretary for benefits concurred with all five recommendations and provided acceptable action plans.

To address Recommendation 1, the Compensation Service will conduct a special focused review for claims involving the spine to ensure compliance with the requirements set forth by recent court decisions involving examiner opinions. Any affected claims will be sent to VAROs for corrective action as needed based on the review.

To address Recommendation 2, VBA plans to update all the body systems of the rating schedule. VBA is currently reviewing the musculoskeletal and neurological conditions body systems to update and standardize the rating criteria. VBA anticipates finalizing the updates to the musculoskeletal body system by November 2020 and the neurological section of the rating schedule by November 2021.

To address Recommendation 3, the Compensation Service will concurrently revise and update the applicable sections of the procedures manual at the same time it updates the rating schedule.

To address Recommendation 4, VBA will make any necessary revisions to the musculoskeletal DBQ form following the publication of the rating schedule update.

To address Recommendation 5, VBA will update the Evaluation Builder tool to include new diagnostic and evaluation criteria when the rating schedule changes are implemented.

The OIG will monitor VBA's progress and follow up on implementation of the recommendations until all proposed actions are completed.

The under secretary for benefits provided comments in addition to responding to the OIG recommendations, stating that VBA took exception to the OIG's practice of estimating the monetary impact of not implementing the OIG's recommendations. The under secretary further stated that the OIG's report assumes that VBA would not make any improvements over the next five years.

In response, the OIG clarifies that it uses a five-year estimate to emphasize the importance of taking corrective actions effectively and in a timely manner, and to highlight the potential magnitude of identified issues if such actions are delayed or never implemented. The OIG acknowledges that the actual future monetary impact will vary because events, rates of payment, available monetary benefits, and circumstances may change. However, that variance is usually largely dependent on if, when, and how VBA implements its corrective actions.

Appendix A: Statistical Sampling Methodology

To accomplish its objective, the OIG team reviewed a statistical sample of veterans' records that had one or more decisions associated with a service-connected spine condition in an initial claim or a claim for an increase decided from January 1, 2018, through June 30, 2018.³⁴ The team used statistical sampling to quantify the extent of cases for which VBA staff did not accurately decide veterans' claims involving service-connected spine conditions.

Population

The review population included 18,952 veterans who had an initial claim for service connection related to a spine condition and 45,378 veterans who had claims for increases decided from January 1, 2018, through June 30, 2018. The OIG team estimated the population to be 18,817 veterans with initial claims and 43,633 veterans with a claim for increase, after excluding cases determined to be outside the scope of review.³⁵

Sampling Design

In coordination with VA OIG statisticians, the team reviewed a random sample of 300 veterans who had decisions associated with service-connected claims for conditions of the spine decided from January 1, 2018, through June 30, 2018, and determined whether VBA staff accurately decided the claims.

To review the full range of claims, the OIG team sampled from both initial claims and claims for increase. In addition, the team sampled from both less severe (50 percent combined service-connected evaluation or less) and more severe (60 percent combined service-connected evaluation or more). The team selected a stratified random sample of 75 sample cases from each of the following four strata for a total of 300 claims:

- Initial claims with a combined service-connected evaluation of 50 percent or less
- Initial claims with a combined service-connected evaluation of 60 percent or more
- Claims for increase with a combined service-connected evaluation of 50 percent or less
- Claims for increase with a combined service-connected evaluation of 60 percent or more

³⁴ For the purpose of this review, an initial or original claim is considered the first claim a veteran submits for VA disability compensation benefits that included a spine-related condition that was granted service connection. A subsequent claim for increased evaluation relates to a previously established service-connected spine-related condition.

³⁵ The OIG team identified nine cases marked as spine-related; however, data reviews indicated they should be excluded. For example, some cases related to different issues while others did not have final decisions.

All cases within each stratum had the same probability of being selected. The sample size was chosen after reviewing the expected precision of the projections given the sample size and potential error rates, as well as balancing the logistical concerns of sample review. Precision is improved by increasing sample size; however, the rate of improvement decreases as sample size increases. For example, increasing sample size in this project from 300 to 400 would have improved precision by approximately 1 percent.

Population size was also included in the calculations for expected precision during planning, but the overall effect of population size on precision is small. If 50 samples are drawn from a population of 100,000 records with an error rate of 25 percent, the margin of error on the projected error rate will be 10.1 percent. For the same sample size and error rate from a population of 10,000 records, the margin of error will be 10 percent.

Weights

The OIG team calculated estimates in this report using weighted sample data. Sampling weights are computed by taking the product of the inverse of the probabilities of selection at each stage of sampling.

Projections and Margins of Error

The point estimate (estimated error) is an estimate of the population parameter obtained by sampling. The margins of error and confidence interval associated with each point estimate is a measure of the precision of the point estimate that accounts for the sampling methodology used. If the OIG repeated this review with multiple samples, the confidence intervals would differ for each sample, but would include the true population value 90 percent of the time.

The OIG statistician employed statistical analysis software to calculate the weighted population estimates and associated sampling errors. This software uses replication, or Taylor-Series Approximation, methodology to calculate margins of error and confidence intervals that correctly account for the complexity of the sample design.

The sample size was determined after reviewing the expected precision of the projections based on the sample size, potential error rate, and logistical concerns of sample review. While precision improves with larger samples, the rate of improvement does not significantly change as more records are added to the sample review.

Figure A.1 shows the effect of progressively larger sample sizes on the margin of error.

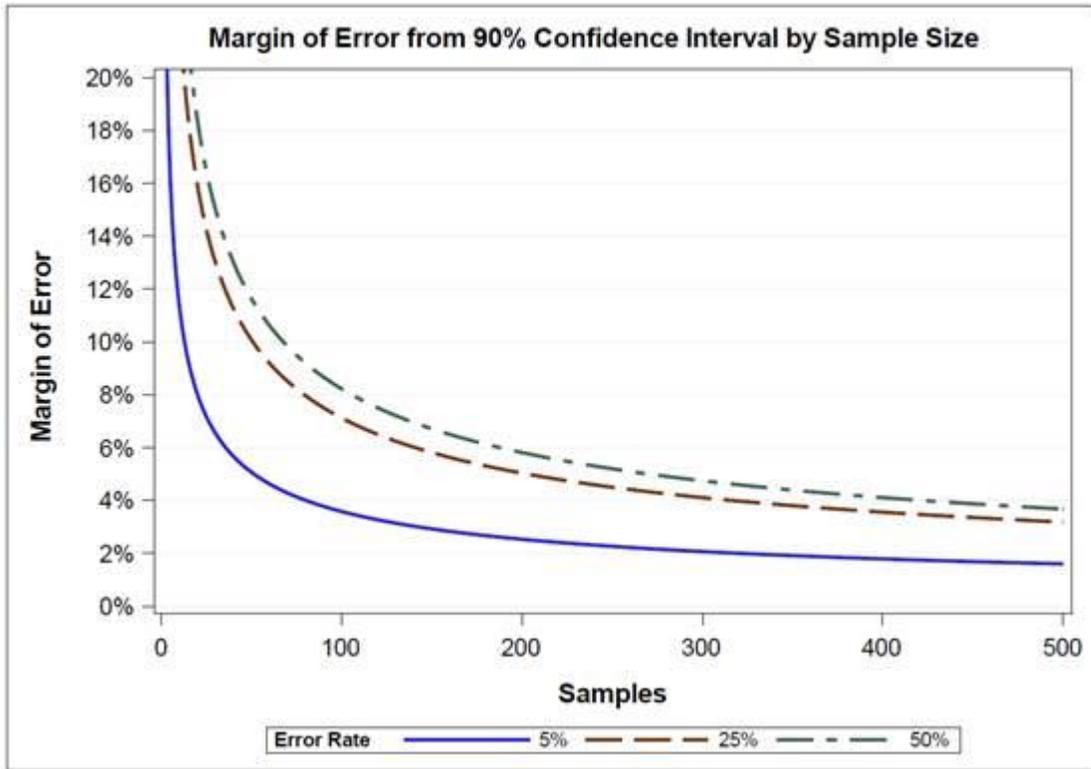


Figure A.1. Effect of sample size on margin of error
 Source: VA OIG statistician’s analysis

Table A.1 shows the projections of the total estimated adjusted universes for veterans’ spine-related claims for each category during the review period.

Table A.1. Summary of Projections of Errors by Error Category

Result	Estimate	Margin of error	Lower limit of 90% confidence interval	Upper limit of 90% confidence interval	Count from sample
Estimated universe – original claims	18,817	127	18,691	18,944	150
Estimated universe – subsequent claims	43,633	1,322	42,310	44,955	150
Total universe	62,450	1,328	61,122	63,778	300

Source: VA OIG statistician’s projected number of in-scope veterans’ claim

Note: Margin of error and confidence intervals represent a measure of uncertainty for the row estimates and do not total.

Table A.2 shows the projections of the estimated errors for spine-related claims for each category included in this report.

Table A.2. Summary of Projections of Errors by Error Category

Error category (result)	Estimate	Margin of error	Lower limit of 90% confidence interval	Upper limit of 90% confidence interval	Count from sample
Impact error	4,959	1,849	3,110	6,808	33
Potential impact error	29,777	3,751	26,026	33,527	138
Total	34,736	3,744	30,992	38,480	171

Source: VA OIG statistician's projected number of errors based on sample and universe

Note: Margin of error and confidence intervals represent a measure of uncertainty for the row estimates and do not total.

Table A.3 shows the projections of the estimated error percentage for spine-related claims for each category included in this report.

Table A.3. Summary of Projections of Error Percentage by Error Category

Error category (result)	Estimate	Margin of error	Lower limit of 90% confidence interval	Upper limit of 90% confidence interval	Count from sample
Impact Error	7.9%	3.0%	5.0%	10.9%	33
Potential Impact Error	47.7%	5.9%	41.8%	53.6%	138
Total	55.6%	5.9%	49.8%	61.5%	171

Source: VA OIG statistician's projected number of error percentage based on sample and universe

Note: Margin of error and confidence intervals represent a measure of uncertainty for the row estimates and do not total.

Table A.4 shows the projections of the estimated monetary impact of spine-related claim errors.

Table A.4. Summary of Projections and Confidence Intervals for Spine-Related Claim Errors Resulting in Monetary Impact

Claim strata category	Projection	Margin of error	Lower limit of 90% confidence interval	Upper limit of 90% confidence interval	Count from sample
Initial claims	\$3,087,936	\$2,847,191	\$240,745	\$5,935,126	15
Subsequent claims	\$23,968,993	\$20,976,814	\$2,992,179	\$44,945,808	18
Total	\$27,056,929	\$21,169,158	\$5,887,771	\$48,226,087	33

Source: VA OIG statistician's projection of improper transaction (payment) amounts in dollars

Note: Due to a high variation in monetary values of each impact error (from \$27.05 to \$22,437.83) the margin of error in the projection is high (39.8 percent Coefficient of Variation). Margin of error and confidence intervals represent a measure of uncertainty for the row estimates and do not total.

Due to the high margin of error, the OIG team reported the lower limit of approximately \$5.9 million but included the details here to show how the amount could be as much as about \$48.2 million.

Appendix B: Court Decisions

The United States Court of Appeals for Veterans Claims has exclusive jurisdiction to review final decisions by the Board of Veterans' Appeals.³⁶ From 2010 to 2017, the court made several decisions pertaining to medical exam opinions and statements affecting VBA's claim processing.

In March 2010, the court held that VA is not required to perform repetitive medical exams until it obtains a conclusive causation opinion.³⁷ However, in these specific circumstances, it must be clear from the examiner's opinion and/or VA's analysis of the record that the examiner has not used the phrase "without resort to mere speculation" as a substitute for the full consideration of all pertinent and available medical facts.³⁸ The examiner should precisely identify what facts cannot be determined if they are unable to give a cause opinion without resorting to speculation. The court decision obligated examiners to adequately explain why an opinion could not be provided.

In August 2011, the court also held that if pain is associated with joint movement, the examiner must give an opinion on whether pain could significantly limit functional ability during flare-ups or when the joint is used repeatedly over a period of time.³⁹ The opinion, if feasible, must be expressed in terms of the degree of additional range of motion loss due to pain on use or during flare-ups.⁴⁰ Essentially, if the exam showed joint motion was painful, the examiner must provide an opinion on whether pain could significantly reduce function during flare-ups or during repeated use over time, and if feasible, the examiner should estimate this additional reduction of motion.

In September 2017, the court allowed VA to accept an examiner's statement that he or she cannot offer an opinion without resorting to speculation only if it is clear that the examiner considered all available evidence before stating that an opinion cannot be reached.⁴¹ In addition, the examiner must explain the basis for not providing a non-speculative opinion. The statement that an opinion cannot be provided without resorting to speculation must be based on a lack of knowledge among the "medical community at large" and not insufficient knowledge of the specific examiner.⁴² To comply with the court, the DBQ form includes questions regarding range of motion and potential impairment. The disability compensation exams may not always be conducted while the veteran is experiencing severe symptoms. Therefore, the spine DBQ forms

³⁶ 38 C.F.R. 7252(a).

³⁷ *Jones v. Shinseki*, 23 Vet.App. 382 (Mar. 25, 2010).

³⁸ *Jones*, 23 Vet.App. 382.

³⁹ *Mitchell v. Shinseki*, 25 Vet.App. 32 (Aug. 23, 2011) (citing *DeLuca v. Brown*, 8 Vet.App. 202 (1995)).

⁴⁰ *Mitchell*, 25 Vet.App. 32.

⁴¹ *Sharp*, 29 Vet.App. 26.

⁴² *Sharp*, 29 Vet.App. 26.

ask the examiner “if pain, weakness, fatigability or incoordination significantly limit functional ability with repeated use over a period of time and/or during flare-up?” The examiner can either answer “yes,” “no,” or “unable to say without mere speculation.” At the time of the review, the Exam Request Builder provided the following guidance to the examiner:

If the Veteran states during the examination that flare-ups of the condition occur, but a flare-up is not directly observed during the examination, the examiner is requested to provide an estimate on the frequency, duration, and severity of the decreased range of motion in degrees during a flare-up in the medical history section of the exam. If the examiner is unable to provide an opinion without resorting to speculation, he or she must provide a rationale for such an opinion, based on all procurable information, to include the veteran’s testimony on examination, and not based on an examiner’s shortcomings or a general aversion to offering an opinion on issues not directly observed.

VBA updated its procedures manual in December 2017, advising RVSRs to seek clarification of the conclusion if the examiner provides an insufficient explanation or cannot express an opinion of issues they cannot directly observe.⁴³ VBA regularly updates the procedures manual as needed and notifies VSRs and RVSRs in the field by email of changes since the last update.

⁴³ M21-1, Part III, Subpart iv, Chapter 3, Section D, Topic 2, Block r.

Appendix C: Scope and Methodology

Scope

The OIG team conducted its work from August 2018 through July 2019. The review considered an estimated population of about 62,500 veterans with decisions for initial claims related to the spine as well as claims for increased disability compensation benefits during the period from January 1, 2018, through June 30, 2018.

Methodology

To accomplish the review objective, the OIG team identified and reviewed applicable laws and the VBA procedures manual related to service-connected claims for conditions of the spine. The team performed site visits at the Muskogee, Oklahoma, and St. Petersburg, Florida, VAROs as well as the Jack C. Montgomery VA Medical Center, Muskogee, Oklahoma; the C.W. Bill Young VA Medical Center, Bay Pines, Florida; and the James A. Haley Veterans' Hospital, Tampa, Florida. The team interviewed and obtained testimonial information related to work processes associated with claims for conditions of the spine from VARO managers and staff as well as VA medical center examiners. The team also interviewed and obtained relevant testimonial information from managers and staff from VBA's Central Office, including the Compensation Service.

The OIG team used VBA's electronic systems, including the Veterans Benefits Management System, to review the sampled veterans' claims folders and relevant documentation required to assess whether staff accurately decided the veterans' claims involving the spine. The team discussed the findings with VBA officials and included their comments as appropriate in this report.

Fraud Assessment

The OIG team assessed the risk that fraud, violations of legal and regulatory requirements, and abuse could occur during this review. The team exercised due diligence in staying alert to any fraud indicators by taking actions such as

- Soliciting the OIG's Office of Investigations and reviewing OIG Hotline complaints and concerns for indicators, and
- Completing the Fraud Indicators and Assessment Checklist.

The OIG team did not identify any instances of fraud or potential fraud during this audit.

Data Reliability

The OIG team used computer-processed data from VBA's Corporate database. To test for reliability, the team determined whether any data were missing from key fields, included any calculation errors, or were outside the time frame requested. The team also assessed whether the data contained obvious duplication of records, alphabetic or numeric characters in incorrect fields, or illogical relationships among data elements. Furthermore, the team compared veterans' names, file numbers, social security numbers, VARO numbers, dates of claims, and decision dates as provided in the data received in the 300 claims reviewed.

Testing of the data disclosed that they were sufficiently reliable for the review objectives. Comparison of the data with information contained in the veterans' electronic claims folders reviewed did not disclose any problems with data reliability.

Government Standards

The OIG conducted this review in accordance with the Council of the Inspectors General on Integrity and Efficiency's Quality Standards for Inspection and Evaluation.

Appendix D: Monetary Benefits in Accordance with Inspector General Act Amendments

Recommendation	Explanation of Benefits	Better Use of Funds	Questioned Costs
1-5	The OIG estimated that errors to veterans' compensation benefits payments resulted in at least \$5.9 million in improper payments. In addition, the OIG estimated at least \$58.9 million in improper payments could occur over the next five years unless VBA establishes adequate internal controls.	\$0	\$64.8 million
	Total	\$0	\$64.8 million

Appendix E: Management Comments

Department of Veterans Affairs Memorandum

Date: August 2, 2019

From: Under Secretary for Benefits (20)

Subj: OIG Draft Report – Accuracy of Claims Decisions Involving Conditions of the Spine (Project No. 2018-05663-DN-0946)

To: Assistant Inspector General for Audits and Evaluations (52)

1. Attached is VBA's response to the OIG Draft Report: Accuracy of Claims Decisions Involving Conditions of the Spine.
2. OIG's report assumes that VBA would not make any improvements over the next five years, including those from implementing OIG's recommendations, and then proceeds to identify a corresponding estimated monetary impact. VBA takes exception to this practice as this assumption is incorrect and misleading to the reader. Furthermore, the methodology/reasoning for the practice is not clearly documented or explained in the report. Generally, agencies are required to complete final action on OIG recommendations within 12 months of publication. Assuming current practices will go unchanged is false, as VBA values OIG's vital oversight role and works diligently to implement recommendations to improve service to Veterans.
3. Questions may be referred to Elisabeth Maher, Program Analyst, at 202-461-8460.

(Original signed by)

Paul R. Lawrence, Ph.D.

Attachment

Veterans Benefits Administration
Comments on OIG Draft Report

Accuracy of Claims Decisions Involving Conditions of the Spine

The Veterans Benefits Administration (VBA) concurs with the findings in OIG's draft report and provides the following comments in response to the recommendations.

Recommendation 1: Implement a plan to conduct a focused analysis of claims processors compliance with the requirements set forth by recent court decisions regarding examiner opinions, and based on the results of that review, formulate a plan to review and take corrective action on affected claims if deemed necessary.

VBA Response: Concur. Compensation Service will conduct a special focused review for claims involving the spine to ensure compliance with the requirements set forth by recent court decisions involving examiner opinions. Any corrective actions on affected claims discovered from the review will be sent to the regional offices for corrective action.

Target Completion Date: September 30, 2020

Recommendation 2: Develop a plan to update the rating schedule to establish more objective criteria for each level of evaluation for peripheral nerves.

VBA Response: Concur. Compensation Service has established a VA Schedule for Rating Disabilities (VASRD) Program Office which will have oversight of the rating schedule. The VASRD Program Office has the authority to revise and update the rating schedule and criteria to align with current medical science and technological advances. VBA plans to update all of the body systems of the rating schedule through rulemaking and to review each body system for any additional updates or revisions on a three to five-year cycle. VBA is currently reviewing the musculoskeletal as well as the neurological conditions body systems to update and standardize the rating criteria. VA will publish such updates through the rulemaking process. VBA anticipates finalizing the updates to the musculoskeletal body system by November 2020, and to the neurological section of the rating schedule by November 2021.

Target Completion Date: November 30, 2020 for musculoskeletal, and November 30, 2021 for neurological conditions.

Recommendation 3: Review all sections of the procedures manual related to peripheral nerve disability evaluations and develop a plan to make updates and clarifications where applicable.

VBA Response: Concur. Compensation Service will concurrently revise and update the applicable sections of the M21-1, Adjudication Procedures Manual at the same time it updates the neurological conditions of the rating schedule through the rulemaking process. VBA anticipates finalizing the updates to the neurological section of the rating schedule by November 2021.

Targeted Completion Date: November 30, 2021

Recommendation 4: Review the disability benefits questionnaire forms for conditions of the spine and determine whether updates are needed to help ensure more accurate and consistent claims decisions.

VBA Response: Concur. VBA will make any necessary revisions to the Musculoskeletal Disability Benefit Questionnaire form following the publication of the musculoskeletal rating schedule update.

Target Completion Date: November 30, 2020

Recommendation 5: Update the Evaluation Builder tool to help users provide more accurate, comprehensive, and consistent information for claims decisions involving the spine and peripheral nerves.

VBA Response: Concur. VBA will update the Evaluation Builder tool to include the new diagnostic and evaluation criteria when the rating schedule changes are implemented into the Veterans Benefits Management System-Rating claims processing system, currently scheduled for November 2020 and November 2021 for both musculoskeletal and neurological conditions, respectively.

Target Completion Date: November 30, 2020 for musculoskeletal, and November 30, 2021 for neurological conditions.

For accessibility, the original format of this appendix has been modified to comply with Section 508 of the Rehabilitation Act of 1973, as amended.

OIG Contact and Staff Acknowledgments

Contact	For more information about this report, please contact the Office of Inspector General at (202) 461-4720.
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