

# *Department of Veterans Affairs*

## **1. Office of Inspector General -- Audit Report**

### **Audit of Appeals Processing Impact on Claims For Veterans' Benefits -- Report # 5D2-B01-013**

**Date: March 15, 1995**

---

*VA needs to take additional actions to reduce the impact of the appeals process on the timeliness of veterans' benefits claims decisions.*

---

**Memorandum to:** Under Secretary for Benefits (20)

General Counsel (02)

Chairman, Board of Veterans' Appeals (01)

**Audit of:** Appeals Processing Impact on Claims for Veterans' Benefits

1. The purpose of the audit was to review the impact of appeals and the appeals process of decisions made by the Department of Veterans Affairs (VA) in processing claims for veterans' benefits. Claimants (veterans and their survivors) who are dissatisfied with a Veterans Benefits Administration (VBA) regional office decision on the award of monetary benefits may appeal the decision or request a review within the VBA regional office and the Board of Veterans' Appeals (BVA) in Washington, DC. We reviewed the appeals process in the VBA, BVA, and Office of General Counsel, as well as data on appealed claims to identify the causes of delays in claims processing and options to improve the process. This audit is one of a series of Office of Inspector General reviews evaluating VA's claims processing system.

2. We found that the very clear emphasis of the current system is to assure that all deserving claimants receive their full benefit. This emphasis has been reinforced with the establishment of the Court of Veterans Appeals (COVA) and the expanded due process requirements the Court has placed upon VA. The unintended result of the expanded due process requirement is that all claims are more complicated and thus are processed less timely. Since the establishment of COVA, the average processing time for original compensation claims has increased from 106 to 212 days and the average processing time of an appealed case with one remand to the VBA regional office of jurisdiction has gone from 746 to 1,016 days. As a result, the most visible issue of the process has become its lack of timeliness rather than its emphasis on equity and fairness.

3. VA has recognized the need to improve claims processing timeliness, and has long term solutions to address the underlying issues. However, due to the increasing case backlogs there is a circularity of untimely claims processing that requires updated information and decisions before the claims can be finalized, with a sufficient number resulting in questionable outcomes.

We believe that the immediate solution is to break the cycle of delayed reviews and find more efficient means to process quality awards that will allow the review process to be simplified.

4. To break the cycle of delayed reviews, VA can simplify and expedite the review process by limiting the appellate review to the conditions as they existed at the time of the decision being appealed. This would increase VA's ability to deal with disputed issues while the data is still reasonably current and allow the record to be perfected (e.g., an expanded medical assessment to provide complete information on a condition), but would preclude consideration of changes in condition after the original decision was made. These later changes would be considered as new claims and be adjudicated on whether there was new and material evidence, and not be part of the appellate review. Avoiding new examinations for the current status of the disability should eliminate, in the appeal cases in which medical re-examinations are involved, the almost 2 years it is taking to screen a case in BVA, remand it to the VBA regional office of jurisdiction, and return the case to BVA.

5. VA needs to expand the role and use of appeal/claimant hearings performed by VBA regional office hearing officers by having them complete hearings for the BVA. We believe that such hearings would provide better access for claimants and provide the opportunity for more cases to be resolved at the VBA regional office level without having to go to BVA, thus reducing the number of appeals. Given the significance of this proposed change, we believe that VA should initiate this on a test basis at VBA regional offices. This will provide the opportunity for the Department to assess claimant acceptability of this approach and the impact on the appeals process.

6. VA should seek to simplify VBA administrative procedures and operations by eliminating redundant claims processing work. This would include eliminating the need for statements of the case with expanded ratings to consolidate work performed by rating specialists and adjudicators to inform claimants of the outcome of their claims and the reasons and bases of VA's decisions. Performing this work and queuing the cases accounted for 70 processing days on cases BVA completed during the first half of Fiscal Year 1994, much of which would be eliminated by removing the redundant claims processing work.

7. The report includes recommendations to address the issues which are discussed above. These recommendations, along with the Department's implementation of ongoing and planned enhancements, can help improve the timeliness of claims processing and provide better customer service to claimants. The Deputy Under Secretary for Benefits concurred with the report recommendations and will prepare a legislative proposal to address the recommended changes in appeals processing in the next legislative package to the Congress. The Chairman, Board of Veterans' Appeals and the General Counsel provided general comments to the report which indicated support for the report recommendations. We consider the report resolved and will follow up on planned actions until they are completed.

MICHAEL G. SULLIVAN

Assistant Inspector General for Auditing

---

For Official Use Only

Public Availability To Be

Determined Under 5 U.S.C. 552

## **TABLE OF CONTENTS**

Memorandum to the Under Secretary for Benefits, Chairman, Board of Veterans' Appeals, and General Counsel

### **RESULTS AND RECOMMENDATIONS**

1. The Appellate Review Should Be Limited to the Conditions as They Existed at the Time of the Decision Being Appealed
2. VA Should Expand the Role and Use of Hearings Performed By VBA Regional Office Hearing Officers
3. VA Should Simplify VBA Administrative Procedures and Operations By Eliminating Redundant Claims Processing Work

### **APPENDIXES**

I OBJECTIVES, SCOPE, AND METHODOLOGY

II BACKGROUND

III SUMMARY OF AUDIT RESULTS REGARDING OVERALL QUALITY OF CLAIMS PROCESSED BY VA

IV SUMMARY OF KEY STEPS IN THE APPEALS PROCESS INVOLVING A SINGLE REMAND

V SUMMARY OF KEY VBA REGIONAL OFFICE ACTIONS IN COMPLETING PROCESSING FOR AN ORIGINAL CLAIM FOR BENEFITS

VI SUMMARY OF STAFFING CHANGES IN VBA AUTHORIZATION AND RATING BOARDS

VII SUMMARY OF RECENT REVIEWS OF VA'S CLAIMS PROCESSING AND APPEALS PROCESS

VIII SUMMARY OF KEY DEPARTMENT INITIATIVES THAT ARE ADDRESSING CLAIMS AND APPEALS PROCESSING PROBLEMS

IX - XII AGENCY COMMENTS (EXCLUDED IN THIS VERSION)

## **RESULTS AND RECOMMENDATIONS**

### **1. The Appellate Review Should Be Limited to the Conditions as They Existed at the Time of the Decision Being Appealed**

We found that the very clear emphasis of the current system is to assure that all deserving claimants (veterans and their survivors) receive their full benefit. This emphasis has been reinforced with the establishment of the Court of Veterans Appeals (COVA) and the expanded due process requirements it has placed upon VA. The unintended effect of these changes (COVA and expanded due process requirements) have been steadily increasing backlogs of cases awaiting decisions at Veterans Benefits Administration (VBA) regional offices and the Board of Veterans' Appeals (BVA) and steadily increasing average processing times for these decisions. As a result, the most visible issue of the process has become its lack of timeliness rather than its emphasis on equity and fairness.

Backlogs have caused a circular effect in that cases have to wait longer to be decided and as a result the information in them becomes out of date, causing more delays as current information is gathered to assure complete information is available to fully assist the claimant and that all possible issues are considered. Since the establishment of COVA, the average processing time for original compensation claims has increased from 106 to 212 days and the average processing time of an appealed case with one remand to the VBA regional office of jurisdiction has gone from 746 to 1,016 days.

There is a need to break this cycle of delays causing more delays by limiting the appellate review to the conditions as they existed at the time of the decision being appealed. This would increase VA's ability to deal with disputed issues while the data is still reasonably current and allow the record to be perfected (e.g., an expanded medical assessment to provide complete information on a condition), but would preclude consideration of changes in condition after the original decision was made. These later changes would be considered as new claims and be adjudicated on whether there was new and material evidence, and not be part of the appellate review. Avoiding new examinations for the current status of the disability should eliminate, in the appeal cases in which medical re-examinations are involved, the almost 2 years it is taking to screen a case in BVA and to return the average remand<sup>1</sup> back to BVA after VBA regional office processing. Implementing this action could provide VA with an opportunity to reverse the trend of increasing appeals processing times that claimants are now experiencing due to the impact of COVA on VA's processing of cases.

### **COVA Has Fundamentally Altered VBA and BVA Decision Making Processes**

The decision making processes of VBA and BVA have fundamentally changed since passage of the Veterans' Judicial Review Act (VJRA). The Act, enacted November 18, 1988, established

COVA. VJRA gave COVA authority to review decisions of BVA, which is the final level of review within VA for claims involving benefits administered by VA. COVA has issued precedential decisions significantly changing VA's interpretation of law and applicable regulations and procedures, as well as the duties and functions of VBA regional offices and BVA. COVA's precedential decisions on issues such as VA's duty to assist claimants, to fully explain the reasons and bases for its decisions, and to address all issues in claims including inferred issues, have had a profound impact on VA's adjudication and appeals processes.

Before the VJRA, BVA decisions were usually not detailed or highly technical. BVA also did not usually comment on the credibility of statements and testimony received in support of a claim. The VJRA required BVA to include the reasons or bases for findings and conclusions in its decisions. The intent was to produce decisions that would not only enable a claimant to understand the precise basis for a BVA decision but to also understand BVA's response to the claimant's arguments. This requirement was also intended to produce decisions that would enable COVA to understand VA's action. The unintended effect of these changes have been steadily increasing backlogs of cases awaiting decisions and steadily increasing average processing times for these decisions.

### **Effects of COVA on VBA and BVA Operations**

The specific effects of COVA on VBA and BVA operations can be summarized as follows:

COVA's interpretation of the law has resulted in precedential decisions requiring fundamental changes in adjudication regulations and procedures. As a result, VBA and BVA decision making are not as informal as they were before COVA. VBA and BVA decisions are now lengthier, more complex, and more legalistic in wording. The time and effort required to make these decisions have increased significantly.

The average processing time for original compensation claims has increased from 106 to 212 days and the average processing time of an appealed case with one remand has gone from 746 to 1,016 days.

Additional staff time must be spent on providing claims examiners with training on the changes in procedures and regulations required by COVA, which means less time is available for decision making. Also, the increase in information required to document the decisions and notice letters to veterans has expanded, requiring additional staff time for typing and proofreading.

After COVA began remanding a significant percentage of cases to BVA for additional development and review, BVA increased the percentage of cases it remanded to VBA regional offices. In the years immediately preceding establishment of COVA, BVA remanded about 18 to 23 percent of its cases. The remand rate is now about 50 percent.

The VJRA required that VA decision making be sufficiently detailed to permit meaningful review by COVA. As a result, written decisions are now longer and more detailed and therefore not as timely. Letters to claimants also take significantly longer to complete.

## Changes Required by COVA Have Increased Processing Times for All BVA and VBA Actions

While relatively few BVA decisions are appealed to COVA, all BVA decisions must be able to undergo judicial review. Standards imposed by COVA, including notice and due process procedures and analysis of additional evidence in previously denied claims, have increased the length and complexity of BVA decisions, "added a legalistic and adversarial tone to the decision making process," and greatly increased the time it takes to issue a decision. On the other hand, the BVA Chairman has observed: "No decision of the court has yet resulted in an improvement in decision productivity or timeliness anywhere in the entire VA adjudication system."<sup>2</sup> The timeliness of final BVA decisions has deteriorated. The BVA Select Panel<sup>3</sup> reported that the average processing time of an appealed case with one remand has gone from 746 days in Fiscal Year (FY) 1991 to 1,016 days in FY 1994. The accompanying chart provides a breakdown of where the 1,016 days were spent in the appeals process.

### **VA Can Improve Timeliness of Claims Processing by Simplifying the Appeals process**

Our review found that VA can significantly reduce this lengthy appeals processing time by simplifying the appeals process and reducing the need for remands. The Select Panel recommendation to prescreen cases in BVA should reduce the 203 days it takes to identify and do preliminary work on cases that need to be remanded. VA has also initiated a long-term program intended to address the problems of quality and timeliness in the claim and appeals processes. However, the audit determined that VA can improve timelines of claims processing by almost 2 years, in the appeal cases in which medical re-examinations are involved, by simplifying the appeals process and eliminating the need to remand cases now being sent back to VBA regional offices.

This would be accomplished by limiting the appellate review to the conditions as they existed at the time of the decision being appealed. This would increase VA's ability to deal with disputed issues while the data is still reasonably current and allow the record to be perfected (e.g., an expanded medical assessment to provide complete information on a condition), but would preclude consideration of changes in condition after the original decision was made. These later changes would be considered as new claims and be adjudicated on whether there was new and material evidence, and not be part of the appellate review. Avoiding new examinations for the current status of the disability should eliminate almost 2 years of processing time, in the appeal cases in which medical re-examinations are involved, that is, the time it is taking to screen a case in BVA (203 days) and return the average remand back to BVA after VBA regional office processing (411 days). Implementing this action could provide VA with an opportunity to reverse the trend of increasing claim and appeals processing times that claimants are now experiencing due to the impact of COVA's decisions on VA's processing of cases.

The BVA and COVA should not be permitted to remand cases for development of medical information tending to show changes in condition occurring after the original decision was made. Although claimants would retain the right to submit information showing changes in physical condition in cases on appeal, these changes would not be adjudicated as part of the appellate review, but would be considered by VBA regional offices using current procedures for claims for

increased benefits. Limiting the scope of appellate review would still allow remands to complete the record by obtaining contemporaneous medical information (e.g., an expanded medical assessment to provide complete information on a condition at the time of the claim) that the VBA regional office should have reviewed when it made the decision being appealed.

The BVA Select Panel identified the same issue (eliminating the remands) and made an alternative recommendation that BVA retain the cases and perfect them within BVA. As can be seen in the accompanying chart, with remands making up such a large proportion of the cases handled, any reduction in their number will provide an improvement in appeals processing timeliness when cases no longer need to go through that step. We have a concern, shared by Veterans Service Organizations (VSOs) and others in VA, that with BVA unable to meet its current workload, that expanding its role would be counterproductive. Also, BVA still anticipates remands back to the VBA regional offices in the conceived system. VBA expressed a concern with our recommendation that while it may be a good short term fix, over time it could create multiple appeals in cases that are now being consolidated. We believe that this should not be a significant problem in that the cycle of delay in case processing would be broken and the other, long term corrective actions VA is initiating would have had an opportunity to work, with an expected reduction in case backlogs.

## **Conclusion**

To break the cycle of delayed reviews, VA should simplify and expedite the review process by limiting the appellate review to the conditions as they existed at the time of the decision being appealed. Avoiding new examinations for the current status of the disability should eliminate almost 2 years, in the appeal cases in which medical re-examinations are involved, it is now taking to screen a case in BVA and return the average remand back to BVA after VBA regional office processing. Implementing this action could provide VA an opportunity to reverse the trend of increasing claim and appeals processing times that claimants are now experiencing due to the impact of COVA on VA's processing of cases.

## **For More Information**

A discussion of the overall quality of claims processed by VA is included in Appendix III on page 1.

A summary of the key steps in the appeals process involving a single remand is presented in Appendix IV on page 1.

A summary of the key VBA regional office actions in completing processing of an original claim for benefits is presented in Appendix V on page 1.

A summary of recent reviews of VA's claims processing and appeals process is presented in Appendix VII on page 1.

A summary of key Departmental initiatives that are addressing claims and appeals processing problems are discussed in Appendix VIII on page 1.

## **Recommendation 1**

We recommend that the Under Secretary for Benefits initiate legislation, in consultation with the Chairman of the Board of Veterans' Appeals, and the General Counsel to limit the scope of appellate review to the proper evaluation of the conditions as they existed at the time of the decision being appealed.

### **Deputy Under Secretary for Benefits Comments**

The Deputy Under Secretary concurred with the recommendation.

### **Implementation Plan**

The Deputy Under Secretary indicated that a legislative proposal would be drafted and included in the next legislative package to the Congress.

(See Appendix IX on page 1 for the full text of the Deputy Under Secretary's comments.)

### **Office of Inspector General Comments**

The Deputy Under Secretary's comments and implementation plan meet the intent of the recommendation. We made revisions to the report as requested by the Deputy Under Secretary to better clarify the circumstances that would limit the scope of appellate review. We consider the recommendation resolved and will follow up on the planned action until it is completed.

### **Chairman, Board of Veterans' Appeals Comments**

The Chairman, Board of Veterans' Appeals provided comments that indicated no objection to the recommendation, but expressed a belief that Veterans Service Organizations (VSOs) would be opposed to a recommendation that "could be viewed as curtailing existing appeal rights." The Chairman's comments also raised concerns about the "speculative nature of the benefits" of this recommendation and the possibility of increased appellate workload for BVA. The Chairman's comments acknowledged that "this recommendation should clearly simplify, to some degree, adjudication processes for both VBA and BVA. What has not been predicted is how many new claims and appeals will enter the system as a result of having claimants initiate new claims where changes in medical conditions have occurred subsequent to an unfavorable original VA decision."

(See Appendix X on page 1 for the full text of the Chairman's comments.)

### **Office of Inspector General Comments**

This report recommendation did not require any specific action by the Chairman, Board of Veterans' Appeals, but we did request the Chairman's comments. While the Chairman's comments indicated a belief that VSOs would be expected to object to our recommendation to limit the scope of appellate review, our discussions with a number of the VSOs did not find this to be the case. In fact, the majority of VSOs we contacted supported our recommended approach



to break the cycle of delayed reviews that could improve claims processing timeliness and provide better customer service to claimants.

With regard to the Chairman's concerns about the benefits associated with the recommendation, we believe our recommendation to limit the scope of appellate review is the best approach that is now available to begin the process of breaking the cycle of delays causing more delays in the appeals process, and reduce the current significant backlog of cases. While we do not know how many new claims and appeals could enter the system because of our recommended limit in the scope of appellate reviews, we believe that our recommendation will provide the opportunity for overall improved efficiencies and more timely processing of cases over the long haul. As discussed in the report, our recommendation should reduce the need for remands for "current exams" which adds substantial workload and delays to the appeals process. Our review showed that avoiding new examinations for the current status of the disability should eliminate, in the appeal cases in which medical re-examinations are involved, the almost 2 years it is taking to screen a case in BVA and to return the average remand back to BVA after VBA regional office processing. We believe our recommendation can have a positive impact on breaking the cycle of delayed claims processing and provide more timely service to claimants who are now waiting years for case decisions.

### **General Counsel Comments**

The General Counsel (GC) commented that "we have no legal objection to the substance of your recommendations." The GC comments indicated that "we are unaware of any statute that prescribes the BVA's scope of appellate review. In our opinion, VA could limit the BVA's scope of appellate review without initiating legislation." The GC comments also highlighted the type of situations when new claims should be adjudicated that involve new and material evidence.

(See Appendix XI on page 1 for the full text of the General Counsel's comments.)

### **Office of Inspector General Comments**

This report recommendation did not require any specific action by the GC, but we did request the GC's comments. While the GC comments indicate that legislation is not needed to implement our recommended changes in the scope of appellate review, we believe that the significant nature of this proposed change in appeals processing requires preparation of a legislative proposal and approval of the Congress. This process will assure that the recommended changes in VA's handling of claimant appeals are based in law and given appropriate Congressional oversight and approval before implemented by the Department. We believe the report recommended actions are consistent with the GC comments concerning the proper adjudication of claims involving new and material evidence.

#### **2. VA Should Expand the Role and Use of Hearings Performed By VBA Regional Office Hearing Officers**

The VBA regional office hearing officers should be used to perform hearings for the Board of Veterans' Appeals (BVA). Since BVA suspended hearings in 1994, due to the backlog of pending

cases, the conduct of hearings by VBA regional office hearing officers for BVA could provide the opportunity to resume this important step in the appeals process. VBA regional office hearing officers, acting as agents of BVA in benefit issues and related cases, could conduct hearings at local VBA regional offices which would provide greater convenience to claimants (veterans and their survivors) and still provide claimants with an adequate opportunity to present their case.

We believe that this would provide the opportunity for more cases to be resolved at the VBA regional office level without having to go to BVA, thus reducing the number of appeals. This could also reduce future claimant travel expenses because they would not have to attend hearings that, in the past, have been conducted by BVA in Washington, DC. This could also permit BVA to concentrate staff resources on other case work to reduce the current backlog of pending cases and avoid future travel costs associated with BVA traveling board hearings that would not have to be resumed. Given the significance of this proposed change, we believe that VA should initiate this on a test basis at VBA regional offices. This will provide the opportunity for the Department to assess claimant acceptability of this approach and the impact on the appeals process.

### **VBA Regional Office Hearing Officers Should Act As Agents of BVA to Conduct Hearings**

VBA regional office hearing officers hold post-decisional hearings with claimants on VBA benefit issues and pre-determination hearings in proposals to reduce, suspend, or terminate compensation or pension benefits. Hearings are ex parte<sup>4</sup> in nature and reflect the duty to assist the claimant in identifying and obtaining all relevant evidence in making the claim for benefits.

Assuming that the appellate review is limited to the original decision, as we have recommended in this report, all the items at issue could be covered at the VBA regional office, assuring it has all the relevant information to make its decision as well as making it more convenient for the claimant. Current technology, including teleconferencing, video, and audio recording, could be employed as part of the record to assure that the claimant's point of view is fully available to any appellate review.

We believe that VBA has already initiated appropriate changes in VBA regional office staffing that would provide the opportunity for VBA staff to effectively act as agents for BVA and conduct hearings. Since Fiscal Year 1991, VBA has been shifting staff from authorization to rating functions to more effectively address the increasing complexity of case processing. As a result, VBA rating board staffing levels have increased from 591 to 846 by Fiscal Year 1994. Also, the nature of rating support staff has been changing with the use of rating technicians in place of development clerks to enhance the quality of rating development.

### **VBA Conducted Hearings Could Reduce the Number of Appeals and Enhance the Effectiveness and Efficiency of the Hearing Process**

The Select Panel recommended that the Secretary seek statutory authority to have VBA regional office hearing officers act as agents of the Board to conduct hearings, for use of appellants at their option. We support this concept, but believe that the goal should be to reduce the number of BVA conducted hearings as much as possible. We believe that having VBA regional office

hearing officers conduct hearings for BVA would provide the opportunity for more cases to be resolved at the VBA regional office level without having to go to BVA, thus reducing the number of appeals. Formerly, VBA regional office hearing officers held hearings for BVA, but this practice was discontinued because it was thought not to comply with a long-standing statutory requirement that hearings be completed by BVA staff who will make the final determination in the claim. As a result, the Department would need to obtain a legislative change to authorize resumption of this former practice.

Hearings held by VBA regional office hearing officers would also provide greater convenience and reduce travel costs for claimants, avoiding the past requirement to travel to Washington, DC., where 1,172 BVA hearings were conducted in FY 1993, or the longer wait for a BVA traveling board, which conducted 3,533 hearings in FY 1993. This should be of significant benefit to claimants. Future travel costs could also be avoided by VA if BVA traveling board hearings that cost \$177,086 in FY 1993 were not resumed. BVA hearings were suspended in 1994, with a current backlog of 8,749 pending cases.

Our review has clearly shown that there are a number of potential benefits to both claimants and the Department with VBA conducted hearings. However, given the significance of this proposed change we believe that VA should initiate this on a test basis at VBA regional offices. This will provide the opportunity for the Department to assess claimant acceptability of this approach and the impact on the appeals process.

## **Conclusion**

The role and use of hearings performed by VBA regional office hearing officers should be expanded to include performance of hearings for BVA. This action could result in a number of positive benefits to both claimants and VA by: (i) providing the opportunity to resume hearings which BVA has currently suspended due to the backlog of pending cases, (ii) permitting BVA to continue to concentrate staff resources on other case work to reduce the current backlog of pending cases and avoid future travel costs associated with BVA traveling board hearings that would not have to be resumed, (iii) providing greater convenience to claimants, and (iv) providing the opportunity for more cases to be resolved at the VBA regional office level, thus reducing the number of appeals.

## **For More Information**

A summary of staffing changes in VBA authorization and rating boards is presented in Appendix VI on page 1.

## **Recommendation 2**

We recommend that the Under Secretary for Benefits initiate legislation, in consultation with the Chairman of the Board of Veterans' Appeals, and the General Counsel to test an expanded role and use of hearings performed by VBA regional office hearing officers that would include performance of hearings for the BVA.

## **Deputy Under Secretary for Benefits Comments**

The Deputy Under Secretary concurred with the recommendation.

### **Implementation Plan**

The Deputy Under Secretary's comments indicate that this recommendation will be implemented "provided statutory authority is obtained to allow hearing officers to act as agents of BVA to conduct hearings." The Deputy Under Secretary also indicated that current regulations involving the conduct of hearings would have to be revised.

(See Appendix IX on page 1 for the full text of the Deputy Under Secretary's comments.)

### **Office of Inspector General Comments**

The Deputy Under Secretary's comments and planned actions meet the intent of the recommendation. We have been advised that a legislative proposal will be drafted and included in the next legislative package to the Congress. We consider the recommendation resolved and will follow up on the planned action until it is completed.

### **Chairman, Board of Veterans' Appeals Comments**

The Chairman, Board of Veterans' Appeals commented that "we have no objections to the thrust of this recommendation, although it should be noted that a legislative change would be necessary to facilitate the recommended test. Prior to enactment of the Veterans Judicial Review Act of 1988, this hearing option was available to appellants, and it was extensively used." The Chairman also commented that "we believe the greatest opportunity for improvement an expanded hearing officer program offers is the potential to resolve more appeals before they reach the BVA level." His comments noted that "having hearing officers tackle the current backlog of BVA field hearing requests may be helpful where appeals can be allowed without BVA involvement." The Chairman's comments also highlighted the advantages of BVA conducted hearings and the reason why BVA implemented the moratorium on scheduling new hearings.

(See Appendix X on page 1 for the full text of the Chairman's comments.)

### **Office of Inspector General Comments**

This report recommendation did not require any specific action by the Chairman, Board of Veterans' Appeals, but we did request the Chairman's comments. The Chairman's comments are supportive of the recommendation. We have revised the recommendation to require that implementation be subject to legislative approval.

### **General Counsel Comments**

The GC commented that "we have no legal objection to the substance of your recommendations." However, the GC comments did note that legislation would be needed before VBA hearing

officers could conduct hearings for the BVA. The GC comments also discussed the legislative history concerning the authority for the conduct of BVA hearings and the discontinuance of the former practice of using VBA hearing officers to conduct hearings for BVA.

(See Appendix XI on page 1 for the full text of the General Counsel's comments.)

### **Office of Inspector General Comments**

The report recommendation did not require any specific action by the GC, but we did request the GC's comments. In response to the GC comments, we revised the report recommendation to require that implementation be subject to legislative approval and we clarified the report discussion concerning the past use of VBA hearing officers to conduct hearings for BVA.

#### **3. VA Should Simplify VBA Administrative Procedures and Operations By Eliminating Redundant Claims Processing Work**

Audit results showed that VA could simplify administrative procedures and operations by eliminating the need for VBA regional office staff to prepare statements of the case (SOC) in disability cases and use expanded rating decisions in its place. Currently, each claimant (veterans and their survivors) who initiates an appeal of a VBA regional office rating decision must receive a SOC. The purpose of the SOC is to aid the claimant in his or her appeal by describing the issues on appeal and summarizing the evidence of record, applicable laws and regulations, and reasons for the decision.

Our review disclosed that in appeals on disability issues, the preparation of the SOC duplicates information also contained in current rating decisions. In our view, the preparation of the SOC is an unnecessary duplication of effort that adds substantially to the waiting time for claimants in the appeals process. On average, it takes approximately 70 days for a VBA regional office to complete a SOC. We believe that a significant portion of this time could be eliminated if an expanded rating decision is used in its place. This would provide the opportunity for VA to eliminate redundant work and reduce claimant waiting time in the appeals process.

#### **The Appeals process Should Be Simplified By Eliminating Statements of the Case and Using an Expanded Rating Decision in Its Place**

Claims for disability benefits, which make up 90 percent of appeals, are processed by the Adjudication Divisions in VBA regional offices. If a review of medical evidence is necessary to decide the claim, the decision is documented by a rating board in the form of a rating decision. After the rating decision is completed, the VBA regional office informs the claimant of the decision and his or her appeal rights. The decision notice must fully explain the decision by incorporating the rating narrative into the letter or by including the rating decision as an attachment to the letter.

Title 38, United States Code, Chapter 71, "Veterans' Benefits," prescribes the procedures for processing appeals. A claimant who disagrees with a VBA regional office rating decision on a claim for benefits may initiate an appeal by filing a Notice of Disagreement with the office that

made the decision. That office reviews the case and if unable to grant the benefits sought sends the claimant a SOC. The SOC states the issues on appeal, summarizes the evidence, law, and regulations pertinent to these issues, and discusses the reasons for VA's decision on each issue. Currently, the only information that is in the SOC that is not included in the rating decision is the citation of law, which could be added to produce an expanded rating decision.

The SOC is sent to the claimant to assist in preparing his or her appeal. Included with the SOC is a form to be used for filing a substantive appeal. If the claimant still disagrees with the VBA regional office decision after reviewing the SOC, he or she uses the substantive appeal form to specify the items of fact or law in the SOC believed to be wrong and returns the form to the VBA regional office. If the VBA regional office still cannot decide the issues in the claimant's favor, the office certifies the case to BVA for a final decision. When BVA reaches a particular case on its docket, the VBA regional office sends the entire claim folder to BVA's office in Washington, DC.

In cases in which BVA finds that the information in the claim folder is inadequate for its decision, the case is remanded to the VBA regional office for additional development and review. As with initial disability claims, a rating board reviews any additional medical evidence received and prepares a rating decision. If the VBA regional office still cannot decide the appealed issues in the claimant's favor after this review, the office sends the claimant a supplemental statement of the case (SSOC) outlining the additional information reviewed, applicable laws and regulations, and the reasons for the decision. Under our recommended procedures, SSOCs would have to be produced only in cases in which a new rating decision was not prepared.

On average, it takes approximately 70 days for a VBA regional office to complete a SOC, and we believe that a significant portion of this time could be eliminated if the expanded rating decision is used in its place. This would provide the opportunity to eliminate redundant work and reduce claimant waiting time in the appeals process.

## **Conclusion**

VBA should simplify administrative procedures and operations by eliminating the need for statements of the case in disability cases by using an expanded rating decision. This would consolidate work performed by rating specialists and adjudicators and eliminate redundant work and unnecessary waiting time for claimants that adds approximately 70 days to the appeals process.

## **For More Information**

A summary of the key VBA regional office actions in completing processing of an original claim for benefits is presented in Appendix V on page 1.

## **Recommendation 3**

We recommend that the Under Secretary for Benefits initiate legislation, in consultation with the

Chairman of the Board of Veterans' Appeals, and the General Counsel to eliminate the requirement for statements of the case in disability cases, and meet the need to inform claimants and appellate reviewers of benefit decisions with expanded rating decisions that include appropriate legal citations.

### **Deputy Under Secretary for Benefits Comments**

The Deputy Under Secretary concurred with the recommendation.

### **Implementation Plan**

The Deputy Under Secretary indicated that a legislative proposal would be drafted and included in the next legislative package to the Congress.

(See Appendix IX on page 1 for the full text of the Deputy Under Secretary's comments.)

### **Office of Inspector General Comments**

The Deputy Under Secretary's comments and implementation plan meet the intent of the recommendation. We consider the recommendation resolved and will follow up on the planned action until it is completed.

### **Chairman, Board of Veterans' Appeals Comments**

The Chairman, Board of Veterans' Appeals commented that "we find the reasoning underlying this recommendation to be sound and have no objections to it from a BVA perspective."

(See Appendix X on page 1 for the full text of the Chairman's comments.)

### **General Counsel Comments**

The GC commented that "we have no legal objection to the substance of your recommendations."

(See Appendix XI on page 1 for the full text of the General Counsel's comments.)

### **Office of Inspector General Comments**

This report recommendation did not require any specific action by either the Chairman, Board of Veterans' Appeals or the General Counsel, but we did request their comments and they have indicated support for the recommendation.

---

## **OBJECTIVES, SCOPE, AND METHODOLOGY**

### **Objectives**

The purpose of the audit was to review the appeals process impact on VA processing of claims

for veterans' benefits and the timeliness of processing disability claims in general. The audit's objectives were to: (i) identify management initiatives to improve claims processing operations in response to the impact of judicial review, (ii) isolate the appeals process impact on benefit decisions, and (iii) determine ways to reinvent VA structure and processes to provide veterans services more efficiently and timely.

## **Scope and Methodology**

The audit is part of a series of audits the Office of Inspector General (OIG) is completing on claims processing, with emphasis on the timeliness of awards. We reviewed the appeals process impact on claims for veterans' benefits in the Veterans Benefits Administration (VBA), Board of Veterans' Appeals (BVA), and General Counsel. The audit analyzed the findings and recommendations of high level VA study groups established by the Secretary of Veterans Affairs to address the issue of improving productivity and the timeliness of claim and appeals processing. The audit also examined program management reports and assessments by top VA officials reflecting the impact of COVA on appeals processing, including VBA adjudication of claims for benefits and the operation of the BVA and General Counsel. We also reviewed VBA regional office authorization and rating board staffing changes in response to increasingly complex claim and appeals processing requirements. The audit reviewed Department procedures and actions in implementing COVA decisions.

The audit was performed in accordance with generally accepted government auditing standards. Based on the results of our initial audit work and audit client input, we concluded that we could prepare our report and recommendations without substantive audit verification.

We reviewed prior audit reports issued by OIG and the General Accounting Office that addressed claims processing and the appeals process. Other reviews performed by the Blue Ribbon<sup>5</sup> and the BVA Select<sup>6</sup> Panels were analyzed and evaluated. We concluded these other reviews reasonably portrayed VA claims processing adjudication issues. In fact, our observations paralleled those of the BVA Select Panel. We are supportive of the general thrust of the recommendations and conclusions of both of these reviews concerning adjudication issues.

During our audit we reviewed claims processing, appellate, and personnel documents, at VBA, BVA, and General Counsel and interviewed management and support personnel. Also, we discussed these issues with COVA personnel and Veterans' Service Organizations representatives.

An onsite visit was conducted at the VA Regional Office, Cleveland, Ohio, to obtain an understanding of the kinds of problems confronting the field, concerning the adjudication process.

We did limited validating and testing of the Hearing Officer Letters and Reporting (HOLAR) System data to establish the quality and accuracy of the data being used. We reviewed VBA reporting of staffing and performed analyses pertaining to hearing officers. We performed limited testing on this report by comparing the report data to the database and limited follow up at



VARO Cleveland and at VA Central Office (VACO).

Our audit also encompassed reviews and analysis of decisions issued by BVA and COVA. Specifically, we analyzed remands, allowed and denied decisions using data obtained from BVA, COVA, and VA annual reports. Through comparative analysis, we determined that data used to analyze decisions were reliable. We also reviewed pertinent VA policies, legislative history, and other program management reports.

## **BACKGROUND**

Monetary benefits are paid to veterans who are disabled during active military service, or paid to wartime veterans with limited income. Related benefits may also be available to their survivors. Claims for these monetary benefits are processed in VBA regional offices located in all states. Claimants who are dissatisfied with a VBA regional office decision of the award of monetary benefits may appeal the decision or request a review within the VBA regional office and the Board of Veterans' Appeals (BVA) in Washington, DC. Claims for monetary benefits make up over 90 percent of the cases appealed, the remainder dealing with issues such as home loans and hospitalization.

The Veterans' Judicial Review Act (Public Law 100-687), enacted November 18, 1988, established the Court of Veterans Appeals (COVA). This act provided the Court authority to review decisions of the BVA, which is the final level of administrative review within VA for claims involving VA benefits. Decisions of the Court are binding on the entire VA, not just the particular case. Thus, the Court's decisions establish precedent and go beyond the facts and circumstances of an individual case and require changes in VA regulations, policies, and procedures for all similar cases.

In May 1992, the Deputy Secretary for Veterans Affairs told the Senate Committee on Veterans' Affairs, "I can think of no other single piece of legislation that is so fundamentally changing the Departmental adjudicative process as is judicial review....[D]ecisions by the Court have expanded significantly the time and effort required to prepare virtually every decision VA makes." In Congressional testimony in April and May 1993, the Chairman of the BVA and the Deputy Under Secretary for Benefits both said that the effect of the Court's judgments was to make VBA regional office and BVA decisions more lengthy and complex. These decisions take more time to complete, which is a major factor in the increased backlog of cases and average processing time and the reduced number of cases processed at VBA regional offices and BVA. According to testimony, average processing time is now 180 days; before creation of the Court, the average time was 121 days. The backlog of pending monetary claims was 474,000 at the end of FY 1994. Since the Court's decisions also established precedent, both BVA and VBA have had to allocate resources and establish methods for reviewing, interpreting, and disseminating these decisions. Both staffs must also establish or revise policy and procedures as required by the Court's decisions.

Congressional oversight committees and veterans service organizations have raised questions concerning VA's commitment to timely and complete acceptance and implementation of COVA

judgments reversing BVA decisions and requiring review of similar affected cases and changes in VA's methods of operation. VA's top management officials have stated that VA is meeting its Court-imposed obligations of assisting claimants in developing their claims, fully explaining decisions, promptly carrying out the Court's judgments in similar cases as well as the subject case, and reviewing affected directives and procedures. There is an acknowledged need to reduce the processing time in awarding veterans benefits. The appeals process has a significant impact, directly in some cases, but indirectly on all cases, on claims processing timeliness.

The Chairman of the Board of Veterans' Appeals recently wrote: "Judicial review has provided a convenient forum for testing the validity of departmental regulations and settling some long-disputed points of veterans law. It has also helped in establishing a more systematic approach to benefits claims adjudication and in providing a forum for dispute resolution outside the Department to veterans who may feel that VA has not treated them fairly." However, the Chairman noted, these benefits have resulted in "increased formality and complexity of the adjudication process and a considerable expansion of the time necessary to render a final decision in a claim."

## **SUMMARY OF AUDIT RESULTS REGARDING OVERALL QUALITY OF CLAIMS PROCESSED BY VA**

Overall Preponderance of Claims Processed by VA Do Not Have Indications of Inadequate Quality. There is no significant evidence of outright error identified in the current appeals process as it currently operates that is not being effectively dealt with, based upon the fact that:

A limited number of cases are appealed (17 percent average over last 5 years).

Few appealed cases, whether heard by BVA or COVA, are actually overturned (1 percent average over last 5 years).

There are a significant number of remands for clarification or additional development, and a number of these remanded cases are approved by the originating office (5 percent average of all claims over last 5 years, but 50 percent of FY 1994 appeals).

This implies that while the basic decisions being reached are sound, the number that need to be changed/corrected is too significant to ignore.

## **SUMMARY OF KEY STEPS IN THE APPEALS PROCESS INVOLVING A SINGLE REMAND**

Shaded areas in this diagram designate aspects of the appeals process that would be affected by the recommendations made in this report. Average elapsed processing times are for the first half of FY 1994 and are taken from the "Report and Recommendations of Select Panel on Productivity Improvement for the Board of Veterans' Appeals." The average total processing time for an appeal involving a single remand was 1,016 days from the date of receipt for the claim to BVA's final decision.

The Board of Veterans' Appeals renders the final decision for VA on all appeals for entitlement to benefits administered by VA. If the claimant does not agree with a final decision of BVA, he or she may continue the appeal as outlined in the following diagram.

### **SUMMARY OF KEY VBA REGIONAL OFFICE ACTIONS IN COMPLETING PROCESSING FOR AN ORIGINAL CLAIM FOR BENEFITS**

Shaded areas in this diagram designate aspects of the claims and appeals process that would be affected by our recommendation to eliminate redundant work by eliminating the requirement for VBA regional office preparation of statements of the case (SOC). By using an expanded rating decision in its place, a significant portion of the 70 days now required to complete an SOC could be eliminated.

### **SUMMARY OF STAFFING CHANGES IN VBA AUTHORIZATION AND RATING BOARDS**

VBA regional offices have adjusted the mix of specialists used to process claims to reflect the needs of the increasingly complex system today. The most widespread change has been the shift of staff from authorization to rating functions. The following chart shows this change. In addition, the nature of rating support staff has been changing. Such as the use of rating technicians (generally GS-11 senior adjudicators) in place of development clerks (GS-5) is expanding to enhance the quality of rating development. Also, organizational experiments are further expanding the participation of authorization staff in rating actions.

### **SUMMARY OF RECENT REVIEWS OF VA'S CLAIMS PROCESSING AND APPEALS PROCESS**

Office of Inspector General Audits

*Timeliness of Benefits Claims Processing Can Be Improved (Report No. 4R6-B01-055, March 1994)*

Claims processing timeliness was considerably below VBA's goals for the last 4 years. For example, processing time in FY 93 exceeded the goal of 106 days by 83 days or 78 percent. The audit found that VBA management is taking action to improve timeliness including developing an automated system to help VBA regional office personnel identify evidence requirements and several other experiments using advanced technology and modified organizational structures.

A major factor in loss of timeliness is the need to develop a complete case, including all necessary evidence, during initial processing. This causes the claim to be returned for completion during subsequent review stages resulting in an avoidable duplication of processing efforts until a complete case is produced.

Claims processing can be expedited by earlier and more complete identification of necessary evidence, quicker follow-up when evidence is not received promptly, better monitoring of pending claims, and reduction of the number of times cases are handled. Improving data accuracy

in the Work-In-Progress (WIPP) Subsystem would enhance the monitoring of claims processing.

The audit identified areas which VBA could consider in their search for additional actions which might improve claims processing. These included eliminating the requirement for certified copies of documents; removing the disability requirement for nonservice-connected pension benefits; revising the requirements for multiple approvals of rating decisions, awards, and disallowances; increasing specialization of claims processors by program; and consolidating claims processing activities. Specific recommendations were not made to implement any of these options, but they were identified as potential ways to reducing processing complexity.

*Timeliness of Compensation and Pension Examination Services (Report No. 4R1-A02-092, July 1994)*

Adjudication of benefit claims by VBA is often dependent on the results of medical examinations of the veterans who submit the claims. Veterans Health Administration (VHA) medical facilities conduct these examinations based on VBA requests. Timeliness and accuracy are important because VBA cannot properly complete claims processing until VHA furnishes the results of the requested examinations.

Of the approximately 405,000 examination requests VHA processed during FY 93, about 95,000 (23.5 percent) were not performed and those examination appointments were canceled. This forced VBA and these veterans to restart the examination request process which prolonged claims processing by both VBA and VHA.

The audit found that several initiatives were being taken to improve examination services by (i) requiring medical centers to ensure that VBA-requested examinations are properly processed, (ii) allowing veterans who request an appointment change to reschedule rather than canceling their exams, and (iii) improving procedures for scheduling examinations for homeless veterans. Local VBA and VHA facilities also were testing a number of innovative case management procedures that can not only improve the examination process but also enhance coordination and communication among VBA, VHA, and the veterans.

*Accuracy of Compensation and Pension Benefit Payments to Hospitalized Veterans (Report No. 4R1-B01-102, August 1994)*

Eligible disabled veterans are entitled to receive VA benefit payments under either the compensation program for service-connected disabilities or the pension program for nonservice-connected disabilities. By law, VBA must reduce the benefits of certain veterans receiving hospital, domiciliary, or nursing home care at VA expense. Authority also exists for temporarily increasing certain veterans' disability payments to 100 percent when they are hospitalized in excess of 21 days for treatment of service-connected disabilities. Overpayments and underpayments to veterans can be avoided if VHA notifies VBA when veterans are hospitalized and VBA processes benefit adjustments in a timely and accurate manner.

The audit looked at the effectiveness of the VHA notification procedures for hospitalized veterans, including utilization of the Automated Medical Information Exchange (AMIE) system.

The effectiveness of AMIE, the primary method used to notify VBA of hospitalizations, was limited because (i) key Decentralized Hospital Computer Program (DHCP) eligibility data was inaccurate, (ii) VBA regional offices having claims jurisdiction outside a VHA medical center's geographic area do not have access to AMIE, and (iii) information regarding admissions of veterans to community nursing homes under VA contract was not integrated in DHCP.

The audit also determined whether benefits paid to hospitalized veterans had been properly processed by VBA. The audit found that 622 (8.9%) of the 6,994 veterans with benefits subject to reduction, who were hospitalized or in community nursing homes as of March 31, 1993, had been overpaid \$7 million during their periods of confinement. The audit also found that 153 (2.5%) of the 6,158 hospitalized veterans may have been underpaid an average of about \$1,000 a month for hospitalizations exceeding 21 days because of their service-connected conditions. Benefit payment errors were caused by deficiencies involving both VBA and VHA. In 383 (62%) of the overpayments cases, VBA adjudicators did not reduce benefits upon receiving notification that veterans were confined. In the remaining 239 (38%) of the cases, VHA failed to notify VBA that veterans were hospitalized.

The audit identified opportunities to (i) enhance the effectiveness of AMIE as a notification tool and (ii) prevent overpayments and underpayments to veteran beneficiaries. The audit also noted that better notification procedures and enhanced communications between VHA and VBA facilities would enable VBA to more effectively implement these procedures. The report presents a series of recommended actions to improve the accuracy of benefit payments made to hospitalized veterans.

## Departmental Reviews

### *Blue Ribbon Panel on Claims Processing (November 1993)*

After a 3-month study of the VBA claims adjudication process using a Total Quality Management approach, the Panel determined that development of initial and reopened disability compensation claims is inadequate; response time for requested evidence from all sources is excessive; and the length of time cases remain in the rating board is unacceptable. As a result, the Panel proposed ways to improve processing timeliness and reduce the backlog of pending claims. At the core of the proposals is the realignment of all VBA regional office functions related to rating issues into a single "rating activity." The proposals also focused on:

Improving training, the quality of medical examinations, and the response time for receipt of documentary evidence to support claims; Developing new and revised ADP initiatives; Redesigning the application for disability benefits and its instructions; and Elimination of the requirement for certified copies of documents relating to marriage and dependency.

Specific actions to implement the proposals are highlighted in the action plan appended to the Panel's report. The proposals did not directly consider issues such as the impact of the appeals process or the legal and procedural requirements stemming from Court of Veterans Appeals (COVA) decisions on the timeliness of claims processing.

*BVA Select Panel on Productivity Improvement (June 1994)*

On June 1, 1994, the BVA (Board of Veterans' Appeals) Select Panel on Productivity Improvement concluded 2 months of deliberations, during which it received briefings from a number of VA officials and reviewed a number of studies and reports. Three assumptions governed the Panel's policy considerations: first, as a result of decisions by COVA, claims processing has become a more complicated and time consuming enterprise and will likely become more so as the Court continues to define due process requirements; second, budgetary constraints preclude any significant staffing increases, a traditional remedy for claims backlogs; and third, the Panel recognized the need to reach consensus if its recommendations were to receive favorable consideration and swift implementation.

The Panel did achieve widespread consensus, although not unanimity, on the following recommendations:

Aggressively implementing Blue Ribbon Panel recommendations; Revising timeliness measurement standards and the appeals processing system to include testing of the revised system; Prescreening appeals; Placing responsibility and accountability with the Board; Increasing hearing options; Assisting claimants in choosing appeal options; Improving training and performance measurement of Board attorney advisors; Providing technology improvements such as on-line services, document imaging, and teleconferenced hearings; and Continual reviewing of timeliness problems.

**SUMMARY OF KEY DEPARTMENT INITIATIVES THAT ARE ADDRESSING CLAIMS AND APPEALS PROCESSING PROBLEMS**

Successful implementation of a number of initiatives by VBA, including the Blue Ribbon Panel study findings (see Appendix VII, on page 1) should improve the accuracy and the related timeliness of claims processing. These include:

The Claims Processing System (CPS) computer decision assistance program, and other modernization efforts; Increased rating board staffing and training; and Alternative VBA regional office organizational and position structures.

Successful implementation of the Board of Veterans' Appeals (BVA) Administrative Procedures Act of 1994 (P.L. 103-271), which eliminated the limitation on the number of BVA members, providing the Chairman greater authority to appoint temporary Board members, and allowed single member decisions, should improve BVA efficiency. In addition, recent administrative actions by the Board such as the re-establishment of productivity measurement standards has had a positive impact on work accomplished and planned modernization such as the announced imaging technology being developed with VBA, hold promise for improvements. Also, implementation of the BVA Select Panel on Productivity Improvement study findings (see Appendix VII, on page 1) has the potential to improve the timeliness and overall productivity of BVA operations.

---

*Created: 4/23/96 Updated: 4/23/96*