DEPARTMENT OF VETERANS AFFAIRS

ADVISORY COMMITTEE ON DISABILITY COMPENSATION

December 6-7, 2016

MINUTES

Members Present:

Joseph Kirk Martin, Jr., Chairman
Hal K. Bird (via telephone)
George R. Fay
Warren A. Jones
Timothy J. Lowenberg
Thomas Pamperin
Jonathan Roberts
Michael Simberkoff

Members Not Present:

Doris Browne
Elder Granger
Elizabeth Savoca

Staff Present:

Ioulia Vvedenskaya, DFO
Stacy Boyd, VBA
Laurine Carson, Assistant Director, Compensation Service, VBA**
Elizabeth Kruse, Deputy Director, Operations Management, Office of Field Operations (OFO)*
Dave McLlenachen, Director, VA Appeals Management Center (AMC)*
Pamela Miller, Acting Assistant Director, Mandatory Contract Examination Program Office, Compensation Service, VBA*
Astrid Perez, Deputy Director, National Work Queue (NWQ), VBA**
James Sampsel, VBA*
Brandi Traylor, Senior Procedures Analyst, Compensation Service, Procedures Development & Maintenance Staff, VBA**

Also Present:

Colonel George T. Barido, Director of Reserve Programs and Policy, Health Affairs, OASD HA, RC Med Programs and Policy, DHHQ**
Jonathan Davis, VVA**
Mike Figlioli, Veterans of Foreign Wars (VFW)*
The Advisory Committee on Disability Compensation (ACDC) met in public session at the U.S. Department of Veterans Affairs, 1800 G Street, N.W., Washington, D.C. 20006 in Room 542 on December 6, 2016 and in Room 870 on December 7.

Tuesday, December 6, 2016

Opening Remarks

Chairman Martin called the Committee to order at 8:41 a.m., and asked public observers to introduce themselves.

2016 Biennial Report Update

Dr. Vvedenskaya provided the update. The report addressed seven issues, and included one to six recommendations per issue. Dr. Vvedenskaya assigned subject matter experts to address each recommendation. The experts have until December 13 to report back to her. She will compile their responses and send them to Compensation Service Director Beth Murphy for review. Dr. Vvedenskaya anticipates submitting the experts’ report on January 2.

Dr. Simberkoff asked to what extent the individual policies would change under the new administration. Dr. Vvedenskaya said pointed out that Compensation Service director was not a political appointment and she did not think the Service’s work would change much in the near future.

After Ms. Murphy completes her review, the report will go to Acting Under Secretary for Benefits Tom Murphy, and finally it will go to the Secretary.

Mr. Lowenberg asked how long it would take to get a response from the Secretary. Dr. Vvedenskaya said she typically worked with the Advisory Committee Management Office (ACMO) to brief the chief of staff, who in turn would brief the Secretary, hopefully in June.

Veterans Affairs Schedule for Rating Disabilities (VASRD) Review Update

Dr. Vvedenskaya provided the update. Final rules for gynecological and breast disorders and oral and dental conditions have been submitted to the Office of General Counsel (OGC) for supervisory review.
Mr. Pamperin asked if VA received many comments for proposed rules. Dr. Vvedenskaya said it varied depending on the rule. Both gynecological and breast disorders and oral and dental conditions received eight comments. Mr. Pamperin asked if there were any rules that were not yet proposed. Dr. Vvedenskaya said there was only one, concerning neurologic disorders. The retirement of Dr. Nick Olmos-Lau, the subject matter expert reviewing this topic, has delayed the completion of a proposed rule. Drs. Jerry Hersh and Gary Reynolds are at work on one.

The eye and vision final rule is being reviewed at the VBA leadership level. Dr. Vvedenskaya recently finished drafting the hematology and lymphatic final rule. She expects all final rules to be complete in 2017 or 2018.

Mr. Fay recommended asking about the status of VASRD rules as often as possible when communicating with VA leadership. Dr. Simberkoff noted that the deadlines ACDC suggested had not been implemented.

Dr. Vvedenskaya said the endocrine final rule had been submitted to OGC for the first round of review. Diabetes had been separated out from this rule. Staff had approached Dr. Leonard Pogach about forming a diabetes workgroup.

Mr. Pamperin noted staff did not have a neurologist, and suggested asking the Veterans Health Administration (VHA) to loan one to assist with the neurology rule. Mr. Lowenberg proposed that ACDC receive an update at its next meeting from the diabetes workgroup. Dr. Vvedenskaya promised to set aside time for updates on diabetes and neurology. Mr. Fay asked how many physicians were on staff at the Compensation Service. Dr. Vvedenskaya said there were currently three physicians; the Service was authorized to have eight. Mr. Fay recommended the Committee receive an update on the re-staffing process. Dr. Vvedenskaya agreed to add re-staffing to the list of topics for future ACDC meetings.

Dr. Simberkoff pointed out the Disability Benefits Questionnaires (DBQs) were being updated, which he hoped would lead to less ambiguous ratings. Mr. Pamperin observed that when a new rule was adopted, each pending claim had to be evaluated under both the old and new rules to see which yielded a better result. Dr. Simberkoff asked if a decision reached under an old rule could be appealed under a new one. Dr. Vvedenskaya reminded the Committee it would receive a presentation on appeals modernization later that day.

Chairman Martin said one of the report’s recommendations for VASRD called for the management plan to identify specific concurrence timelines for all internal concurrences of the draft, proposed, and final rules, and to allow for the establishment of anticipated timelines for the Office of Management and Budget (OMB) and other external concurrences.

Future ACDC Meeting Topics

Chairman Martin invited Committee members to suggest topics for future ACDC meetings. Dr. Jones proposed the effect of the new administration on the Committee.

The Chairman said Dr. Vvedenskaya typically invites the chief of staff, the Under Secretary for Benefits, and the Secretary to address the Committee at each meeting.
Secretary, while unable to attend the ACDC meeting, had agreed to meet with Chairman Martin and Dr. Vvedenskaya on Thursday.

Mr. Lowenberg pointed out that the Committee’s primary charge was the VASRD, and proposed a systematic review.

Chairman Martin said he would like to see ACDC work more closely with other VA advisory committees.

Opportunity for Public Comments

Ms. Park asked if and when the 2016 Biennial Report would be made public. Dr. Vvedenskaya said shortly after the Secretary issued his response, both report and response would be posted on the ACMO website.

The Committee received a written comment from Michelle Gatz, an employee of Yellow Medicine County Veteran Services in Granite Falls, Minnesota. Ms. Gatz maintained that claims were being denied because there was no reliable source of information to prove that a Veteran was exposed to Agent Orange outside Vietnam. The list VA used to verify claims was compiled from a 2006 review led by Dr. Alvin Young, but that report had not been updated. Ms. Gatz suggested that a special committee be assigned to investigate records at the National Archives and other locations to clarify exposure. She asked that this group be unbiased and not include Dr. Young, whom she deemed untrustworthy.

Mr. Pamperin told the Committee that many Servicemembers were exposed to Agent Orange outside a combat environment, so the exposure would only be noted in installation records, which in the Army are only maintained for five years. However, VA did know where Agent Orange was used and stored, and what units were in those areas. Mr. Pamperin felt the Committee should not focus on Dr. Young but rather on how many Veterans were unaware that their service in Vietnam or elsewhere may have led to Agent Orange exposure. Dr. Simberkoff suggested responding with a letter saying the Committee concurred that more effort was necessary to address this problem. Mr. Lowenberg proposed recommending to the VA/Department of Defense (DoD) Joint Executive Council (JEC) that it discuss the issues raised by Ms. Gatz’s letter. Dr. Vvedenskaya said VBA had a subject matter expert, James Sampsel, and offered to have him brief the Committee on Agent Orange.

The Committee recessed from 10:25 a.m. to 10:37 a.m. to await the next presenter.

Compensation & Pension (C&P) Contract Examinations

Ms. Miller gave the presentation. Mandatory Contract Examination Program Office’s objectives are to improve the C&P examination, exercise VBA contract exam authority under Public Laws (PLs) 104-275 and 113-285, contract with the Medical Disability Examination Program office, and distribute exams.

PL 104-275, passed in 1996, authorized the Secretary to contract for medical disability examinations from non-VA sources. VBA began completing contract C&P exams in 1998 at 10 regional offices (ROs). PL 113-235, passed in 2014, authorized the Secretary to expand
the use of contract medical beyond the limitation of PL 104-275. The practice expanded to all ROs in FY2017 at the Secretary’s discretion.

Mr. Lowenberg asked whether PL 104-275 specified which 10 ROs. Mr. Pamperin, who was involved in determining those sites, said his team focused on places of extremely high demand, remote areas, and pre-separation exam sites. Dr. Roberts asked if VA had any problems finding physicians willing to perform contract exams. Ms. Miller said the biggest challenge was having the vendors acquire certain types of examiners.

The contract examination program provides $6.8 billion in mandatory funding to support exam contracts for the base year and four option periods of performance. It includes quality reviews, verification of examiner licensing, ownership of DBQs, and designated points of care assigned to each RO for exam questions and issues.

Mr. Fay asked how long the option periods would be, and whether both VA and the contractor had the power to exercise the option. Ms. Miller said they would be one year, and either party could exercise the option.

October 1, 2016 was the official date for the transfer of VHA’s C&P disability examination management (DEM) contract to VBA. VHA DEM contract exam requests sent prior to October 1 will be completed under the VHA DEM contract. VHA C&P clinics will accept requests from VBA to clarify VHA DEM contractor reports if submitted by December 15.

John “Randy” Detty, chief of the Mandatory Contract Exam Operations Staff, works with OFO and VHA to improve the examination process and oversee examination distribution. Savannah Connally, chief of the Mandatory Contract Exam Acquisition Support Staff, manages contractual obligations; monitors vendor certification, training, and timeliness; and manages mandatory funding. Tammy Fowler, quality officer for the Mandatory Contract Exam Quality Staff, is responsible for quality analysis and error trend analysis.

Mr. Pamperin asked about the time limit for overseas exams. Ms. Miller said the time limit overseas was thirty days. Dr. Roberts questioned whether the $6.8 billion allocated for the program was adequate. Ms. Miller said the funding was established specifically for the contract; the staff was exploring opportunities to expand some of the roles and responsibilities within the division.

Dr. Vvedenskaya announced that James Sampsel, VBA’s subject matter expert on Agent Orange, would meet with the Committee that afternoon. The Committee recessed from 11:52 a.m. to 1:00 p.m. for lunch.

Afternoon Session

ACDC Membership Balance Plan

The Committee was formed on September 30, 2011 with 11 members, and reconstituted in 2013 with 12. John Maki, a sitting member, passed away in 2016. Chairman Martin said VA would like to fill the vacancy with another Veterans service organization (VSO) representative. He reminded members that they could offer suggestions, but the authority to nominate rested with the Under Secretary for Benefits.
Dr. Vvedenskaya stressed the importance of balanced membership under the Federal Advisory Committee Act and VA ACMO policy. ACMO policy dictates that no one shall serve more than two full terms on a VA advisory committee. The second terms of Dr. Browne and Dr. Jones were set to expire in May 2017, but their first terms had lasted only one year. Dr. Vvedenskaya promised to consult with ACMO to determine whether Dr. Browne and Dr. Jones could serve another term. Mr. Bird, Dr. Roberts, and Mr. Pamperin were scheduled to end their first terms in October 2017. The Committee could recommend to the Under Secretary for Benefits whether to reappoint each for a second term.

Dr. Vvedenskaya has informed the VSO community that the Committee is looking for new members. Candidates should have experience working with Veterans, and be familiar with adjudication programs. Dr. Vvedenskaya gave the VSOs until the end of December to respond to her request. She is required by law to place a solicitation for membership in the Federal Register.

Dr. Vvedenskaya thought the Committee would benefit from another health or labor economist. The Committee’s charter allows it as many as 18 members, but Dr. Vvedenskaya felt 12-13 was the right size. She invited any qualified candidate to submit a cover letter and resume.

Chairman Martin noted that getting and maintaining a quorum has been a challenge for the Committee. He stressed the importance of faithful attendance among new members.

Dr. Vvedenskaya noted that Dr. Browne had been elected president of a large professional organization, so ACDC should check before recommending her for another term on the Committee. Mr. Lowenberg pointed out that Dr. Browne was currently the only female Veteran on the Committee, and stressed the value of having that perspective.

Dr. Vvedenskaya invited ACDC to submit suggestions for future members to her and Chairman Martin, and promised to inform the Committee when the announcement was published in the Federal Register, probably in the second week of January.

Agent Orange Briefing

Mr. Sampsel provided the briefing. He said the Benefits Assistance Service handled all outreach for the VBA, and there were multiple websites showing where to go for Agent Orange issues. He also mentioned the Transition Assistance Program. Most VSOs and Congressional staffers were well aware of Agent Orange issues, so Mr. Sampsel did not feel there was a lack of information. Mr. Sampsel said the Agent Orange Act of 1991 established a presumption of exposure for Vietnam Veterans, codified in Title 38 United States Code, Section 1116. The code was also the basis for establishing the diseases associated with Agent Orange exposure. There are currently about 15 diseases officially related to the chemical, with other diseases pending.

Mr. Sampsel explained how VBA handled a Service-connected Agent Orange claim. The first step was establishing Agent Orange exposure, followed by establishing a disease associated with the chemical. Any evidence that a Veteran was in Vietnam is sufficient to presume Agent Orange exposure. It is more difficult to establish exposure for those
exposed to the chemical outside Vietnam, although there is a regulatory presumption for Veterans who were in the Korean demilitarized zone (DMZ) from April 1968 through December 1971.

Dr. Simberkoff asked what the difference was between a statutory and a regulatory presumption. Mr. Sampsel said a statute was a public law created by Congress, whereas a regulation was a development of the details of that public law by an executive branch office.

Agent Orange was manufactured in various parts of the United States and shipped to a naval construction battalion in Gulfport, Mississippi, stored there, and shipped by merchant vessels directly to Vietnam. Mr. Sampsel said VBA receives many Agent Orange claims from Okinawa and Guam, but there is no evidence that the chemical was ever shipped through those places. When the government terminated use of Agent Orange in 1971, remaining stores were shipped to Johnston Island, held there for several years, and incinerated at sea in 1977. Veterans who were at Johnston Island during that time can get an acknowledgment of exposure on a case-by-case basis, but are not presumed exposed. Spray nozzles were tested at Eglin Air Force Base for many years, and anyone associated with that is eligible for an acknowledgment as well.

Dr. Simberkoff asked whether Veterans who were in the Korean DMZ, Johnston Island, or Eglin Air Force Base had been informed of their potential exposure. Mr. Sampsel said he did not know if DoD had informed them, but that VA was not equipped to track down every single Veteran who had been to those places. VA could only get involved once a Veteran filed a claim.

Chairman Martin asked when the spray nozzles were tested at Eglin Air Force Base. Mr. Sampsel said it would have been from the early 1960s until Agent Orange was terminated. Dr. Young was in charge of the testing. Mr. Sampsel disagreed with Ms. Gatz’s assessment of Dr. Young, citing his decades of service in and out of the military, and vouched for his reputability. Dr. Roberts asked what level of disability was normally given for someone exposed to Agent Orange. Mr. Sampsel said the level of disability depended on the level of symptoms. Dr. Roberts said he was contacted by someone who had been exposed to Agent Orange, suffered from three heart attacks and prostate cancer, and only received 10 percent disability. Mr. Sampsel promised to examine this individual’s case.

Gulf War Syndrome Briefing

Mr. Bird said he hoped to receive a similar briefing on Gulf War syndrome at some point, particularly on determining presumption. Mr. Sampsel said he dealt with that as well, and would be happy to brief the Committee. The issue was a little confusing because there were actually two Gulf Wars, but according to the statute, the Gulf War never ended. The statute was originally developed for the first Gulf War, i.e. Operation Desert Shield and Desert Storm in 1990-91. After that war, there were a number of complaints from Veterans that were ill-defined and difficult to diagnose, leading Congress to coin the term “undiagnosed illness.” Mr. Sampsel pointed to a listing of about 15 signs and symptoms indicating a chronic disability pattern without a confirmed diagnosis. Several years later, the statute was modified to add three presumptives: chronic fatigue syndrome, fibromyalgia, and what were called “structural GI problems.” If a Veteran served in Southwest Asia, s/he would receive
an examination, and the VHA C&P examiner would determine if s/he had an undiagnosed illness or one of the three presumptives. The named presumptives were not exclusive.

Mr. Bird said that he recently went through the process himself, and he did not receive a C&P exam. Mr. Sampsel offered to examine Mr. Bird’s case; Mr. Bird said that was not necessary, but maintained that he should have received a C&P exam. Dr. Vvedenskaya suggested that Mr. Bird discuss the matter with Mr. Sampsel privately by email.

The Committee recessed from 2:22 p.m. to 2:59 p.m. to await the next presenters.

Office of Field Operations (OFO) Presentation

Ms. Kruse gave an update on claims processing. OFO provides oversight to the 56 ROs. In FY2016 VBA provided an estimated $12 billion in education benefits to over one million beneficiaries; paid insurance death claims in an average of 3.5 days at nearly 98 percent accuracy; helped 97,000 Veterans avoid foreclosure; increased the number of registered eBenefits users to over six million; provided 14,000 VA benefits briefings to an estimated 378,000 transitioning Servicemembers; completed 1.3 million rating claims and provided rating decisions on 5.76 million issues; reduced the average time to complete a Veteran’s claim by 239 days; completed three million non-rating end products; served 198,000 fiduciary beneficiaries, an eight percent increase from FY2015; and served 137,000 Veterans in the Vocational Rehabilitation & Employment (VR&E) program, a 37 percent increase from FY2015.

Mr. Lowenberg asked if the staffing level had increased from FY2015. Ms. Kruse attributed the increased output to a combination of human resources and technology. Staffing had remained fairly constant.

Prior to 2011 VBA processed 5,000 tons of paper each year, and the average Veteran waited nearly a year for a claims decision. By December 2015 it was processing nearly 100 percent of claims electronically, and the average wait time for a decision had been reduced to 123 days.

Six of the 12 MyVA breakthrough priorities address VBA focus areas: improving the Veteran experience, delivering a unified Veteran experience, modernizing VA contact centers, improving the C&P exam, developing a simplified appeals process, and improving the VA employee experience.

The NWQ was implemented in all ROs nationwide as of May 2016. It allows VBA to prioritize and distribute the claims inventory, improves processing times, and reduces the overall amount of time Veterans wait to receive a decision on their claims, ensuring they receive timely benefits.

VBA works with the MyVA Communities Team to meet the Secretary’s goal of having 100 Community Veteran Engagement Boards stood up by December 2016. As of November 1, there are 93 fully formed boards. Each RO holds quarterly town halls and claims clinics to update Veterans about VA, answer their questions, and help with their claims.
VBA has a goal to reduce its overall inventory of dependency claims to 100,000 by the end of FY2017 and improve the timeliness of dependency claim decisions. As of November 1, 2016, the number of dependency claims pending has fallen from a peak of over 270,000 to about 111,000. VA developed a rules-based processing system to automate most dependency claims and provide more Veterans with self-service options. One in four Veterans submits dependency requests online and 62 percent receive payments in less than one day.

Since its 2015 launch, Vets.gov has improved online access to education benefits, employment services, and health care. Current content from VA websites, including eBenefits and VBA benefit applications and forms, will be redesigned and migrated to Vets.gov and prioritized based on Veteran demand. Vets.gov will complete migration activities by March 2017.

VBA National Call Centers (NCCs) are working hard to create a more positive service experience and improve access for Veterans. NCCs achieved a record low 0.01 percent blocked call rate in September, down 59 percent from January. They average 500 dependency claims per week, and garner a JD Power client satisfaction score of 766, exceeding the federal government benchmark of 754. Their internal quality score for FY2016 is 90.2 percent. VBA plans to implement a Workforce Management System to enhance staffing forecasts, perform predictive analyses, and view agent scheduling online; and expand the point of call resolution. I

Mr. Pamperin asked if the 0.01 percent figure for September was a one-off. Ms. Kruse assured him that the figure remained low in October and November. Dr. Roberts found it confusing that VA had so many significant improvements, and yet it was still a whipping boy for so many politicians. Ms. Kruse attributed VA’s negative reputation to the public’s unfamiliarity with the Department’s inner workings, and the way it is portrayed in the media.

Research and direct communications has revealed that some Veterans are frustrated or confused by the C&P exam process. In response VBA has increased efforts to educate Veterans and family members about the C&P exam process. On July 1, 2016, VBA started a national marketing campaign and coordinated messaging across C&P projects for consistency and branding, including a short video explaining the C&P exam process to properly set Veteran expectations. In addition, research teams comprised of VBA and VHA employees are in the process of completing best practice playbooks and other materials for ROs and C&P clinics around the country.

Appeals Modernization Presentation

Mr. McLenachen gave the presentation. The current VA appeals process, which is set in law, is a complex, non-linear process. On average Veterans wait three years for a resolution on their appeal. For cases that reach the Board of Veterans Appeals (BVA), the average is twice as long. Thousands of Veterans wait much longer; in one case the Veteran waited almost 25 years before the appeal was concluded. Continuous evidence gathering and re-adjudication prolongs the ability to reach a final decision.

Dr. Simberkoff asked what determined whether a matter went to BVA or remained at VBA. Mr. McLenachen said it was the Veteran’s choice.
To ensure that Veterans receive a fair decision on their appeal that is simple, timely, transparent, and fair, VA needs sweeping legislative reform, additional people to address the current workload, process improvements, and modernization of appeals processing technology.

VA sponsored an appeals summit, a series of meetings held in March 2016 with VSOs, advocacy groups, and Congressional staff to design a new appeals process. The new model features three lanes: a higher level review at the RO level, a supplemental claim lane within which all new evidence is submitted, and an appeal lane for appeals to the BVA.

Under the new framework, Veterans may pursue only one lane at a time for the same claimed issue. Choosing one lane over another does not preclude Veterans from later choosing a different lane. There are no limits to the number of times a Veteran may pursue a claimed issue in any of the given lanes. The duty to assist applies only in initial claims and the new framework’s supplemental claim lane.

Mr. Lowenberg asked if the additional options were created with the intent of increasing the chance of satisfaction. Mr. McLenachen said it was partly that and partly to make an early resolution more likely. Dr. Simberkoff asked how many of the decisions that went to the higher level were changed. Mr. McLenachen said there was no way to tell until the new process was administered. The bills authorizing the new process were pending in Congress. Mr. Pamperin asked if the bills were expected to pass soon. Mr. McLenachen said he did not anticipate them passing in the lame duck session, but they might early in the new Congress. Mr. Lowenberg asked what the cost of implementation would be. Mr. McLenachen said the Congressional Budget Office had scored the bills cost-neutral.

The appeal lane features a hearing and a non-hearing option. The non-hearing option allows no additional evidence and a limited window for written argument. The hearing option offers a limited opportunity to submit evidence but also a longer timeframe to resolution.

By 2026, under the current framework and without additional resources, Veterans could be waiting 10 years on average for the resolution of their appeal. By implementing the new framework legislation and with the addition of resources to address the legacy inventory, average wait times could be within one year by 2023.

The sizable inventory of appeals stemming from decisions issued prior to the effective date of the new law would be completed under legacy procedures. VA would require additional resources to meet the timely service expectations of both Veterans and Congress in processing these appeals. Any increase in resources above the FY2017 baseline will be contingent on annual budget appropriations.

VA appeals reform efforts necessitated the realignment of VBA appeals activities (legislative reform, policy, procedures, and operations) under one office. The realignment’s features include one VBA accountable official, the AMC director; a dedicated baseline number of appeals staff; separate appeals resource requests in the annual budget formulation; separate appeals performance reporting accountability to Congress; AMC appeals program administration staff to provide guidance regarding appeals policy, procedures, quality assurance oversight, training, etc.; AMC appeals operations staff responsible for appeals
analytics, resource allocation model, workload management, target setting, performance measurement, etc.; and a focus on reform allowing a single VBA office to concentrate on internal people, process, and technology appeals initiatives, as well as on appeals legislative reform implementation.

The Committee recessed for the day at 4:32 p.m. Dr. Vvedenskaya reminded members that they would reconvene the following day in Room 870.

Wednesday, December 7, 2016

Opening Remarks

Chairman Martin reconvened the meeting at 8:40 a.m. He reminded members that it was Pearl Harbor Remembrance Day, and asked them to think of the 2,400 Servicemembers killed and 1,200 injured during the 1941 attack while conducting the Committee’s business. He summarized some of the previous day’s discussions and outlined the agenda for the remainder of the meeting. He asked members and other attendees to introduce themselves.

NWQ Update

Ms. Perez provided the update. Dr. Vvedenskaya thanked her for giving Mr. Fay and Dr. Browne a tour of the NWQ command center in August. NWQ has been in place for disability compensation claims since May 2016, although the staggered rollout began in some offices in February. Since May VBA has been distributing the work from NWQ to the ROs based on established priorities and their capacity to work claims. With NWQ, VBA seeks to increase the efficiency of the workflow process. It has seen improvements in the cycle time.

Non-rating claims are scheduled to be included in March 2017. After that, appeals will be included as part of the NWQ distribution, meaning the entire RO workload will be distributed from NWQ based on resources and capacity.

Mr. Pamperin asked when appeals would be included. Ms. Perez said VBA had planned to include them in March. It now looks like it may take longer, but VBA hopes it will be complete by the end of 2017. Chairman Martin asked if the staff was in place to handle the transition. Ms. Perez said VBA had hired seven more analysts. Mr. Pamperin asked how long VBA expected a task would take when work was assigned. Ms. Perez said the work was expected to be finished within five days. Chairman Martin asked if the NWQ had a backup to its main operations center. Ms. Perez said it had an information technology support service in place so it could move somewhere else if necessary. Dr. Jones asked if NWQ had incentives for individuals who work accurately and ahead of schedule. Ms. Perez said there were such incentives at the RO level.

Chairman Martin asked whether there was a mechanism that takes into account how many issues a single case encompassed. Ms. Perez said there were such incentives at the RO level. Chairman Martin asked whether there was a mechanism that takes into account how many issues a single case encompassed. Ms. Perez said there was not one at this time, but the potential for one existed. Mr. Lowenberg asked about the residual issues arising from the cultural changes NWQ brought about. Ms. Perez said the process may take a while. NWQ has initiated a series of trainings.

Dr. Vvedenskaya asked Ms. Perez to update ACDC again at its June meeting. Ms. Perez agreed.
Opportunity for Public Comments

Anita Nigam, senior benefits liaison with WWP and former counsel at BVA, said one main difference between the first and second levels of review was that the second was bound by the decisions of the Court of Appeals for Veterans Claims (CAVC). She mentioned that very few disabilities involve strict application of the rating schedule, and asked how the new efficiencies with NWQ and the potential changes to the rating schedule take into account the fact that CAVC has jurisdiction over the ultimate determination on the appeals level. She also asked about the usefulness of boilerplate decisions. Mr. Fay said there should be a capability to review statistically what happens with appeals after the implementation of the new system. Dr. Simberkoff suggested there may be fewer people required to make the decisions, and proposed there be people to explain what's going on to the Veterans. Mr. Pamperin thought that approach was friendly to Veterans, but expensive. He felt VA erred in not realizing the award letter and the ratings were basically risk communications. Enough disabilities were so common that an organization could take a look at the reasons for a rating and field test various methods of communicating that information to find out which were the most effective. Chairman Martin cautioned Ms. Nigam that the comments she was receiving were merely the opinions of ACDC members, not official policy. Dr. Vvedenskaya added that the Committee could convey the thoughts of public commenters to the VA, but it was not composed of subject matter experts, and thus not equipped to answer programmatic questions. Ms. Nigam argued that having more than a boilerplate explanation for a decision would increase the likelihood of appeals.

Chairman Martin asked the VSOs present for their sense of the people that went through appeals and their representation. Ms. Nigam said that most appealing Veterans were represented by VSOs rather than attorneys. Very few were pro se. Dawn Jirak, deputy director for national Veteran services at VFW, agreed with Ms. Nigam’s assessment, but maintained that there were a lot of Veterans coming through with no representation. She agreed with the need to develop realistic expectations, and cautioned that enabling the electronic filing of claims would make that more difficult. VSOs can help Veterans understand how the process works.

Mr. Lowenberg asked the VSOs if they had seen an increase in the number of claimants for conditions based on Reserve component military service in the past 10-15 years. Ms. Jirak and Ms. Matory both said they had.

The Committee recessed from 10:48 a.m. to 11:06 a.m.

Addendum—Future ACDC Meeting Topics

Chairman Martin asked the Committee to brainstorm topics for future meetings. Dr. Vvedenskaya needed some lead time to arrange for subject matter experts to address the Committee. Dr. Simberkoff asked for an overview of the development of new rules for VASRD. Mr. Lowenberg argued there should be VASRD updates at every ACDC meeting, and stressed the importance of establishing deadlines. Dr. Roberts agreed. Chairman Martin suggested the Committee receive an update on MyVA depending on the direction VA leadership takes under the new administration. Dr. Jones pointed out that disability compensation policy was largely directed by the Under Secretary for Benefits, and it was
likely to be a long time before a new one was appointed. Dr. Jones suggested Principal Deputy Under Secretary Tom Murphy brief the Committee on what was likely to change and what would remain constant. Chairman Martin said he and Dr. Vvedenskaya would meet with Mr. Murphy the following day, and that he would like to see ACDC interact more with VA Under Secretaries and the chief of staff, but recognized that those people had busy schedules. He added that the Committee should closely monitor Guard and Reserve issues under the new administration. Dr. Simberkoff proposed that a representative from the JEC address the Committee. Chairman Martin proposed revisiting with VR&E. Dr. Jones suggested a briefing from RAND on earnings loss status.

The Committee recessed from 11:18 a.m. to 12:29 p.m. for lunch.

**Afternoon Session**

**Separation Health Assessment, VA Presentation**

Ms. Traylor gave the presentation. VA and DoD established a joint initiative to support and coordinate a standardized separation health assessment (SHA) process that supports the VA disability compensation program and the mandatory DoD Separation History and Physical Examination (SHPE) program.

VA will conduct the exam for Servicemembers who file a complete application for disability compensation while having 180 to 90 days remaining on active duty. DoD will conduct the exam for Servicemembers who do not file a claim for disability compensation, or who file a claim with less than 90 days remaining on active duty.

The joint strategic plan goal is for all Servicemembers to have a standard SHA. As of 2014, VA's exam serves as the separation exam for pre-discharge claims, apre-separation counseling includes SHA instructions, exams performed by VA and DoD are being done to the common standard, and VA exams are done in SHA DBQ format.

Both departments perform exams to standard. Approximately 20,000 Servicemembers separate each month. Of that number, about 2,000 make VA claims and get VA exams. Over 70 percent of separating Servicemembers on active duty receive a DoD exam.

Pilot objectives include demonstrating a process eliminating the need for a separating Servicemember to provide a copy of the service treatment record (STR), testing the automated communication feedback between VA and DoD systems, and informing future decision making about expanding the SHA initiative based on pilot results.

Dr. Jones pointed out that anything questionable in the record might not make it to its next destination. Ms. Traylor agreed that a Servicemember should not have to hand-carry his/her STR. Mr. Fay asked if the records were going into the claims system automatically. Ms. Traylor said some of them were, but some were still on paper. Dr. Simberkoff asked why paper was being used when both VA and DoD had electronic records. Ms. Traylor said the paper records were from 2003 and before. Chairman Martin asked how many of the 20,000 Servicemembers separating each month were Guard and Reserve. Ms. Traylor promised to get those figures for him. Mr. Bird asked about Servicemembers who don’t get the message about the SHA exam and ask for one a year or two after separating. Ms. Traylor said s/he
would get a standard exam, and their effective date would be whenever they filed the claim, if it were outside of a year. Mr. Davis asked if the DBQ SHAs use was available online. Ms. Traylor said it should be on the DBQ website. Ms. Jirak asked if the DoD would use the DBQ in the exams it conducted. Ms. Traylor said the DBQ was only used on the VA side.

Separation Health Assessment, DoD Presentation

Col. Barido gave the presentation. The purpose of the SHA initiative is to ensure Servicemembers have a standard separation exam, avoid duplicate DoD and VA exams when possible, and ensure the STR is complete and a copy is provided to VA when needed. Exams are given to all active duty and Reserve component Servicemembers with 180 days of continuous active duty service other than training and/or 30 days of continuous active duty service in support of a contingency operation. When filing a VA claim, the VA disability exam can be used if completed in time.

Dr. Jones asked how DoD ensured the complete transfer of paper records. Col. Barido said DoD and VA had launched an STR transfer initiative.

For those not filing a VA claim, the SHPE will be done at a Military Treatment Facility. For Reservists, it may be performed by the Reserve Health Readiness Program. Servicemembers complete a form DD2807-1, Report of Medical History. Clinicians report the exam using the record system or form DD2808, Report of Medical Examination. All occupational health termination physical examinations need to be completed prior to the SHPE. Exams may be completed up to one year prior to separation. Verification or update may be completed 30 days or less before separation.

Reservists with a Service-connected disability who meet other criteria are eligible and encouraged to file a claim with the VA when the disability occurs rather than waiting until separation from service. Over 79,000 currently serving selected Reservists have a VA disability rating. Every Reservist on a period of active duty for 180 days or more or in support of a contingency operation for 30 is required to receive a SHPE prior to release from active duty, which can be utilized to support their claim. Reservists on a non-contingency period of active duty greater than 30 days but less than 180 days are required to receive a report of medical assessment prior to release from active duty. Reservists who incur or aggravate an illness, injury, or disease while in a duty status of 30 days or less generally have 180 days to request a DoD line of duty (LOD) determination. LOD can be utilized to support the Service connection of disabilities. Copies of the LOD are provided to the member and filed in their STR. Reservists receive a periodic health assessment (PHA) on an annual basis which asks whether they have an injury, illness, or disease which was incurred or aggravated while in a duty status since their last PHA.

Chairman Martin expressed concern that a segment of the Air Guard deployed for less than 30 days was being missed. Col. Barido suggested that Personnel and Readiness (P&R) have orders in support of contingency operations of no less than 31 days to cover the loophole. Mr. Bird said he thought many Servicemembers were not getting the support they needed. Col. Barido assured him that the percentage of Servicemembers receiving the standardized briefings was very high, but acknowledged the existence of a doughnut hole.
Tools and references include the SHA Media Tool Kit, which has a brochure with frequently asked questions, a fact sheet, and an article; TRICARE Online, with a Service Separation page and the Blue Button; and electronic medical record systems, such as the Armed Forces Health Longitudinal Technology Application (AHLTA), the AHLTA web print, the Health Artifact and Image Management Solution (HAIMS), the HAIMS to Veterans Benefits Management System interface, and Joint Legacy Viewer.

Mr. Bird said he would like to see the number of separating Guard members and Reservists given the exam. Col. Barido said Dr. David Smith, Deputy Assistant Secretary of Defense (DASD) for Health Readiness Policy and Oversight, had expressed disappointment that the numbers were as low as they were. Ms. Jirak mentioned Guard Your Health, an online source for Guard members and Reservists, with information about health issues, filing a claim, and other matters.

The Committee recessed from 2:04 p.m. to 2:12 p.m.

Compensation Service Update

Ms. Carson gave the update. She has been Assistant Director of the Compensation Service for a year and a half, working with the VASRD team to get back on track with regards to scheduling. There are seven final rules being reviewed by VA and OMB. Ms. Carson is pleased at the opportunity to brief the new administration’s transition team on mental health. She stressed the importance of maintaining traction with the VASRD update. Fortunately the transition team seems to understand the need to revise VASRD.

The Compensation Service is still working on several Part 3 regulations on issues like VA’s role in Veterans returning to active duty, child support and apportionment issues. Ms. Carson said the presumptive for brain cancer has not made it through as a proposed rule; additional scientific support is necessary. The Compensation Service will still consider any Gulf War-related brain cancer claim based on its merits. It has proposed an interim final rule for Camp Lejeune-related presumptives, which is currently with OMB.

Ms. Carson asked that ACDC meet with VBA Compensation Service Director Beth Murphy and Deputy Director of Policy and Procedures Danny Devine at its next meeting.

Chairman Martin asked for a status update on the earnings loss study. Ms. Carson said two staffers were working on that issue, and the Compensation Service issued a request for proposals (RFP), but did not receive any bids from the public. Dr. Vvedenskaya added that the RFP was being revised, and the new version would be posted for 60 days, starting in the second week of January. Mr. Pamperin asked about the VASRD updates that had not made it to the final rule. Ms. Carson said there was only one rule that was not drafted: neurology. The cardiology rule had been drafted, but still needed to go through revisions. The relevant offices at VA recently met to discuss speeding up the concurrence process.

Adjournment

Chairman Martin and Dr. Vvedenskaya asked members to let them know as soon as possible what dates they were available for the Committee’s March meeting, and to think of possible topics for discussion.
There being no further comments, Chairman Martin adjourned the meeting at 3:04 p.m.

Toby Walter  
Neal R. Gross & Company  
Preparer of the Minutes

Ioulia Vvedenskaya, Committee DFO

Joseph Kirk Martin, Jr.  
Committee Chairman