DEPARTMENT OF VETERANS AFFAIRS

ADVISORY COMMITTEE ON DISABILITY COMPENSATION

March 6-7, 2017

MINUTES

Members Present:

Joseph Kirk Martin, Jr., Chairman
Hal K. Bird (via telephone)
Doris Browne
George R. Fay
Elder Granger (via telephone)*
Timothy J. Lowenberg
Thomas J. Pamperin
Jonathan Roberts
Michael Simberkoff

Members Not Present:

Warren A. Jones
Elizabeth Savoca

Staff Present:

Ioulia Vvedenskaya, DFO
Stacy Boyd, Alternate DFO
Thomas Murphy, Acting Under Secretary for Benefits*
Laurine Carson, Assistant Director, Compensation Service, VBA**
Savannah Connally, Chief, Acquisition Support, Contract Exams Program Office, Compensation Service, VBA**
Benton Gammons, VBA*
Mary Glenn, VBA**
Valerie Hussein, VBA**
Victor F. Kalasinsky, Senior Program Manager, Gulf War Illnesses/Military Exposures, Office of Research and Development*
Pamela Miller, Acting Assistant Director, Mandatory Contract Examination Program Office, Compensation Service, VBA**
Beth Murphy, Director, Compensation Service, VBA*
Astrid Perez, Deputy Director, National Work Queue (NWQ), VBA**
Gary Reynolds, Medical Officer, Compensation Service, VBA**
James Sampsel, Compensation Service, Policy Legislative Staff, VBA*
Eric Schell, VBA**

Also Present:

David Forgosh, GAO
Jenny Kim, Jefferson Consulting
Jerry Manar, Veteran
Pat Murray, VFW*
Gregg Orto, VFW
Diane Rauber, NOVA

*March 6 only
**March 7 only

The Advisory Committee on Disability Compensation (ACDC) met in public session on March 6-7, 2017, in Room 870, U.S. Department of Veterans Affairs, 1800 G Street, N.W., Washington, D.C. 20006.

Monday, March 6, 2017

Opening Remarks

Chairman Martin called the Committee to order at 8:29 a.m. He asked Committee members, Department of Veterans Affairs (VA) staff, and public observers to introduce themselves. He spoke of his attendance at the Veterans of Foreign Wars (VFW) Medal of Honor Reception on January 18.

The Chairman met with Tom Murphy, VA's acting Under Secretary for Benefits (USB), following ACDC's December 6-7 meeting. The two discussed filling the vacancy on the Committee left by the late John Maki, as well as possibly expanding Committee membership. They also addressed the policies of VA's Advisory Committee Management Office (ACMO), ACDC's 2016 Biennial Report, delays in updating the VA Schedule for Rating Disabilities (VASRD), individual unemployability (IU), the VA appeals process, Guard and Reserve issues, the National Work Queue (NWQ), the VBA Live Manual, separation health assessments (SHAs), the Transition Assistance Program (TAP), the Committee's October 2015 Interim Report, and presumptive conditions.

ACDC had extended an invitation to David Shulkin, VA's new Secretary, and Jared Lyon of Student Veterans of America to address the Committee. Neither was able to attend the meeting.

Dr. Vvedenskaya informed ACDC that the 2016 Biennial Report had been reviewed by the Office of Disability Assistance. Mr. Murphy's office will review it next. She added that staff placed a solicitation of nominations for new Committee members in the Federal Register on February 17. The deadline for nominations is March 31. All interested persons should submit a letter of intent, full curriculum vitae, and short bio to ACMO.

The Committee discussed a recent decline in Veteran homelessness. Dr. Vvedenskaya offered to invite a representative from VA's Benefits Assistance Service to address ACDC at its September meeting, when analytic assessments of the data from January 2017 point-in-time counts would be available.

The Committee recessed from 9:10 a.m. to 9:18 a.m. to await the arrival of the first scheduled presenter.

The Research Advisory Committee on Gulf War Veterans' Illnesses

Dr. Kalasinsky gave the presentation. The Research Advisory Committee on Gulf War Veterans' Illnesses (RACGWVI, or just RAC) falls under the purview of the VA Office of Research and Development (ORD). Returning Gulf War Servicemembers reported a variety of exposures, including sand and dust, oil and oil-fire smoke/soot, pesticides, pyridostigmine bromide pills, fuels and solvents, vaccinations, and chemical weapons. Symptoms included muscle and joint pain, fatigue, cognitive problems, gastrointestinal problems, respiratory disorders, skin conditions, and sleep disorders.

Physical illnesses with few or no abnormal laboratory tests among Gulf War Veterans have been referred to as "Gulf War syndrome," medically unexplained illnesses, medically undiagnosed illnesses, Gulf War illness, chronic multisymptom illness, and Gulf War Veterans' illnesses.

Congress mandated the formation of an advisory committee on Gulf War Veterans' illnesses in 1998 with Public Law (PL) 105-368 Section 104. RAC was chartered by VA in 2002 and required to file annual reports to Congress through 2014. PL 105-277 Section 1603 mandated reports by the Institute of Medicine (IOM, now the National Academy of Medicine (NAM)) every two years entitled "Gulf War and Health" through 2016.

Dr. Kalasinsky serves as RAC's designated federal officer (DFO). RAC holds three meetings per year, which are open to the public. It has issued three major committee reports, in 2004, 2008, and 2014.

Presumptive conditions for Gulf War Veterans include chronic fatigue syndrome (CFS); fibromyalgia; functional gastrointestinal disorders; undiagnosed illnesses with symptoms that may include but are not limited to abnormal weight loss, fatigue, cardiovascular disease, muscle and joint pain, headache, menstrual disorders, neurological and physiological problems, skin conditions, and sleep disturbances; and nine infectious diseases: brucellosis, Campylobacter jejuni, Q fever, malaria, mycobacterium tuberculosis, non-typhoid salmonella, shigella, visceral leishmaniasis, and West Nile virus.

RAC members include Chairman Stephen L. Hauser, Kimberly M. Adams, James A. Bunker, Fiona Crawford, Marylyn R. Harris, Stephen C. Hunt, Nancy G. Klimas, Katherine A. McGlynn, Jeffrey S. Nast, Stephen L. Ondra, Frances E. Perez-White, Martin A. Philbert, Scott L. Rauch, Caroline M. Tanner, Mitchell T. Wallin, and Scott S. Young.

The Gulf War Research Strategic Plan for 2013-2017 identifies eight focus areas: symptomatic and specific treatments; databases and continued surveillance; establishing an evidence-based case definition of chronic multisymptom illness in Gulf War Veterans;

genetics, genomics, and systems biology; biomarkers; animal models; improving coordination and communication; and translating research findings into practice.

Coordination between VA and the Department of Defense (DoD) includes regular briefings and updates between Gulf War program managers in VA ORD and the DoD Congressionally Directed Medical Research Programs, periodic review of proposals submitted and funded between the agencies, an annual report to Congress, joint working groups, and participation in the CFS Conference and GWI Workshop.

Mr. Lowenberg asked if the VA-DoD collaboration for the Gulf War was replicated for Operation Iraqi Freedom (OIF), Operation Enduring Freedom (OEF), and Vietnam. Dr. Kalasinsky clarified that the joint working groups covered all eras. Dr. Simberkoff asked about the extent to which the illnesses associated with the Gulf War were shared by the civilian population and those serving in the military forces of America's Gulf War allies. Dr. Kalasinsky pointed to papers detailing OIF and OEF Veterans with the same conditions as those serving in Desert Shield and Desert Storm. He added that Gulf War Veterans in the U.K., Australia, the Netherlands, and other coalition partners had reported similar conditions, and that Gulf War Veterans tended to be four times more likely to show the aforementioned symptoms than non-Gulf War Veterans. Mr. Pamperin asked if the Iraqi civilian population had displayed similar symptoms. Dr. Kalasinsky responded that depleted uranium was causing significant problems, but he had not heard of much else.

Mr. Sampsel noted that there was not much evidence for long-term health effects in the NAM reports. Dr. Kalasinsky pointed out that those reports typically dealt with published research, so their focus was more on the past, whereas RAC's was more on the present and future.

Chairman Martin asked about the future of RAC, pointing out that it was only required to provide annual reports to Congress through 2014. Dr. Kalasinsky assured him that RAC has no sunset date. Chairman Martin noted that one of ACMO's priorities was collaboration among VA's advisory committees. Dr. Kalasinsky replied that RAC is interested in working with ACDC as well as other committees.

Gulf War Veterans: Issues and Policies

Mr. Sampsel briefed the Committee on Gulf War illness and disability claims processing. He acknowledged the Gulf War Veterans' frustration, but stressed that VBA must address the issue from the viewpoint of the laws in place. He noted that a disability assessment group conducted compensation and pension (C&P) examinations when there was a claim of Gulf War illness. Some C&P examiners were more informed on the latest research than others. Mr. Sampsel said that addressing that inconsistency was a priority.

Veterans of the First Gulf War were exposed to smoke and particles from over 750 Kuwaiti oil well fires, widespread pesticide and insecticide use, infectious diseases indigenous to the area, fumes from solvents and fuels, ingestion of pyridostigmine bromide tablets on a daily basis as a nerve gas antidote, the combined effect of multiple vaccines administered upon deployment, and inhalation of ultra-fine sand particles. Veterans of OIF, OEF, and the 2003 African Horn operation were exposed to burn pit smoke and particulate matter, inhalation of ultra-fine sand particles, and infectious diseases indigenous to the area.

The relevant statutes are 38 United States Code (USC) 1117-1118 and the regulations at 38 Code of Federal Regulations (CFR) 3.317. Afghanistan Veterans are covered by these laws and regulations for infectious diseases only.

Chronic disability patterns covered include fatigue, signs or symptoms involving skin, headaches, muscle pain, joint pain, neurological signs or symptoms, neuropsychological signs or symptoms, signs or symptoms involving the upper or lower respiratory system, sleep disturbances, gastrointestinal signs or symptoms, cardiovascular signs or symptoms, abnormal weight loss, and menstrual disorders. They are associated with undiagnosed illnesses or medically unexplained chronic multi-symptom illnesses. Infectious diseases and long term health effects covered are listed in 3.317. Diagnosed illnesses with a medical nexus to environmental hazards in Southwest Asia appear under 3.303. Disabilities generally not involved include medically unexplained chronic multi-symptom illnesses of partially understood etiology and pathophysiology, cancers and Agent Orange-related diseases, and musculoskeletal-related injuries. The disability must have manifested at 10 percent for six months by 2016, although there are exceptions for nine presumptive infectious diseases.

There is no need for a Veteran to specifically claim a disability is due to Southwest Asia service if evidence shows actual Southwest Asia service and a disability pattern or disease associated with such service. VA maintains a liberal approach to scheduling C&P examinations. If there is no previous treatment, non-medical and lay statements from the Veteran and individuals acquainted with the Veteran take on greater importance. If a Veteran has previously sought treatment for a chronic disability pattern from a private physician, it is not likely that a resulting medical report will describe the Veteran's disability pattern as an "undiagnosed illness." In general, if a Veteran served in Iraq, Afghanistan, or Djibouti, a lay statement of service near a burn pit should be accepted for scheduling a C&P exam under 3.303.

The C&P examiner has four options: undiagnosed illness, diagnosable but medically unexplained chronic multi-symptom illness of unknown etiology, diagnosable chronic multi-symptom illness with a partially explained etiology, and disease with a clear and specific etiology and diagnosis.

Gulf War Veterans' Illnesses Q&A

Dr. Browne noted a diagnosable condition could not be related to a Veteran's service. Mr. Sampsel clarified that it could not be Service-connected under the regulation addressing Gulf War illness, 38 CFR 3.317, but that it could be Service-connected under the general regulation, 38 CFR 3.303. Dr. Vvedenskaya added that the biggest difference between the two regulations for medical examiners is that 3.317 does not require the examiner to make a medical judgment. Mr. Sampsel pointed out the examiner still needs to identify an undiagnosed illness or a medically unexplained chronic multi-symptom illness.

Mr. Bird asked Mr. Sampsel to expand on the point that a Veteran does not need to specifically claim a disability is due to service in Southwest Asia if evidence shows actual service there. Mr. Sampsel said VA had an issue where some regional offices (ROs) thought a Veteran did need to claim the disability was connected to service in Southwest

Asia to receive an exam. Mr. Bird added that he had had 10 of the 13 chronic disability patterns listed, and it had taken him three years to complete his own claim. He did not receive a Gulf War exam. Mr. Sampsel promised to follow up with Mr. Bird offline.

Dr. Simberkoff asked how many people were requesting exams, how many were receiving them, and what percent were being granted. Mr. Sampsel said the grant rate for Gulf War illness was around 20-30 percent of claims filed, as opposed to 50-60 percent for all disabilities. Dr. Simberkoff asked to see the Gulf War illness disability benefits questionnaire (DBQ). Dr. Vvedenskaya promised to print out copies during the lunch break.

Mr. Manar asked if the Compensation Service or VHA had performed an investigation to see if the 20 percent grant rate was uniform across the country or if there were high or low outliers which might indicate a training problem at certain hospitals. Mr. Sampsel said he was not aware of an investigation, but acknowledged that VA had experienced similar issues with military sexual trauma and post-traumatic stress disorder.

The Committee recessed from 11:48 a.m. to 12:59 p.m. for lunch.

Afternoon Session

Chairman Martin showed the Committee a video detailing the heroism of Hershel W. "Woody" Williams, a Medal of Honor recipient.

Agent Orange Issues and Policies

Mr. Sampsel briefed the Committee on Agent Orange issues and the VBA disability claims process. Agent Orange was an herbicide used in Vietnam during Operation Ranch Hand. It was sprayed from C-123 planes and consisted of 2,4,5-T and 2,4-D. One of the byproducts of 2,4,5-T was TCDD, or dioxin. The amount of dioxin in any given volume of Agent Orange was 5-13 parts per million. TCDD lives only for several hours in sunlight and exists in the everyday environment.

The only study on the long term health effects of Agent Orange was a 30-year study conducted by the United States Air Force on Ranch Hand pilots and crew members that handled the chemical. It found no evidence of a higher rate of cancer or any other disease.

The relevant law is 38 USC 1116, which presumes Agent Orange exposure for anyone with "service in Vietnam" and establishes a list of presumptive diseases and an IOM method for determining associated diseases. 38 CFR 3.307 contains a list of presumptions, and 38 CFR 3.309 has a list of 14 diseases associated with Agent Orange. Bladder cancer, Parkinson's disease-like symptoms, hypothyroidism, and hypertension are pending.

Dr. Simberkoff asked what Parkinson's disease-like symptoms referred to. Mr. Sampsel referred him to the IOM report.

Mr. Sampsel maintained that media and advocates have overstated the effects of Agent Orange on Veterans through anecdotal Veteran statements, sensationalism, and distortion.

To determine service, VBA examines a Veteran's Department of Defense (DD)-214, checks for Vietnam service medals, looks for records of a temporary duty assignment, and goes through Army post office records. VBA makes a distinction between Blue Water Navy Veterans, who served on vessels in the open ocean and do not receive the Agent Orange presumption, and Brown Water Veterans, who served on vessels in inland waterways and do receive the presumption. However, Blue Water vessels often entered inland waterways, and those Veterans think they should also receive the Agent Orange presumption. Mr. Sampsel said he has developed a list to keep track of which ships were in inland waterways. Anyone that was on one of those ships gets the presumption of exposure.

38 USC 1821 presumes that Veterans in certain units in the Korean DMZ between September 1, 1967 and August 31, 1971 were exposed to Agent Orange and are at increased risk for spina bifida.

Mr. Manar mentioned a Board of Veterans Appeals (BVA) case in which the Veteran successfully demonstrated that soil exposure to dioxin could occur if the soil was disturbed. Mr. Sampsel countered that BVA consisted of independent judges and was often the source of misinformation about Agent Orange issues. Mr. Pamperin pointed out that a BVA decision constituted the Secretary's final opinion and that in the soil, dioxin had a half-life of 100 years. Mr. Sampsel pointed out that the question remained as to whether the Veteran was exposed to it, and if so, whether s/he suffered adverse long term health effects.

After their use in Vietnam, C-123s were distributed to Reserve units. Wes Carter, a retired colonel in the Air Force Reserve, has become an advocate for Reservist C-123 pilots that he claims were exposed to Agent Orange. VA, citing the research of Dr. Alvin Young, maintains that such exposure is impossible. A Harvard scientist claimed that dried, solidified TCDD never stops emanating molecules into the air, which led IOM to conclude exposure was possible. There is now a presumption of exposure for Reservists who flew in C-123s and mechanics who worked on them.

Mr. Sampsel monitors the Agent Orange Mailbox for claims of exposure that filter from ROs to the VA Central Office. He reviews DoD documentation of Agent Orange use, testing, and storage to determine the likelihood of exposure to the chemical.

Many Veterans were stationed at air bases in Thailand during the Vietnam War. The CHECO Report, a DoD document from 1973, reprimanded base commanders for not having better security around their perimeters. To remedy the situation, the report recommended fenced-in perimeters with some kind of herbicide used in the middle. Mary Ellen McCarthy, a staffer for the Senate Veterans Affairs Committee, sent VA documentation of guard dogs dying on Thai air bases, presumably because of Agent Orange exposure. VA gave a non-presumptive acknowledgment of exposure on a case-by-case basis to guard dog handlers and security guards that walked the base perimeter.

Dr. Simberkoff asked if the guard dogs did in fact die of Agent Orange exposure. Mr. Sampsel said it was subsequently discovered that the cause of death was an animal viral infection. The Air Force has issued a memo stating there is no evidence of Agent Orange use on Thai bases. Mr. Manar asked if the memo or any of the evidence associated with it had been published. Mr. Sampsel said the Chisholm Law Group, which had a petition for rulemaking pending, filed a Freedom of Information Act request, which was approved.

There are a lot of claims of Agent Orange exposure from Veterans who were stationed in Okinawa. Jon Mitchell, a Welsh journalist living in Japan, has written extensively on the supposed use of Agent Orange there. However, Alvin Young has researched every supply manifest going into Okinawa and found no mention of Agent Orange being delivered there.

Mr. Manar pointed out there was a distinction between a lack of evidence of Agent Orange and its actual absence. Mr. Sampsel conceded the point, promising that VA would change its policy if evidence were to emerge.

VA has received numerous letters from Congress about Agent Orange use in Guam, despite there being no evidence of its use there. The Hawaiian Science Journal has published an article claiming scientific evidence of birth defects due to Agent Orange, but the only source is one Veteran claiming he sprayed the chemical in a certain village. DoD has issued a response criticizing the authors for their claims.

DoD has provided VA with a list of four locations where Agent Orange was tested, developed, and stored: a Canadian base in Gagetown, New Brunswick; Eglin Air Force Base, Florida; Gulfport, Mississippi; and Johnston Island in the Pacific.

The Committee recessed from 2:21 p.m. to 2:34 p.m. to await the next speaker.

Veterans Benefits Administration: Serving our Nation's Veterans

Mr. Murphy answered a series of questions the Committee had submitted.

Given that the workload is starting to climb again, is it being caused by the focus on appeals? Does the unsettled nature of contracting exams contribute to the rise? Mr. Murphy said the contract had gone to the Government Accountability Office (GAO), where the VA prevailed. The following day an appeal was filed in federal court, and the contract is currently in the hands of the Department of Justice. A court date is scheduled for June. The five prime competitors on the contract could perform exams anywhere in the world, and the contract bridge was good through December 2018. The backlog had risen to 101,000 claims because Mr. Murphy had barred appeals people from working on claims. The appeals inventory had stopped climbing for the first time in a decade. Mr. Pamperin asked if the backlog has affected the time it took to complete a claim. Mr. Murphy said the average time to complete a claim was 119 days and falling.

Does VA now have authority to contract in all ROs? Mr. Murphy said it did, as of October 2016. VA has divided the nation into 12 districts, plus an international mission. The national mission was run by Quality, Timeliness, and Customer Service (QTC), the international one by Veterans Evaluation Services (VES). VES is averaging 24 days on its international exams, down six to nine months from where it was.

Work is now distributed through NWQ. How will one office know what is available to schedule in another office? Mr. Murphy mentioned the exam request routing assistant (ERRA) tool, which gave a Veteran Service Representative (VSR) the ability to select from contractors or VHA depending on capacity and time.

Could we get a general update on NWQ and what steps are taken to manage the workload in light of the increased inventory? Mr. Murphy noted that inventory had remained steady around 100,000 despite an eight percent rise in claims. NWQ now handles distribution, and there are no longer ROs where it takes 450 days or more to process a claim. Program changes in distribution are scheduled to go into effect later in March, which are expected to drive up the percentage of cases resolved in the local RO.

Mr. Pamperin mentioned a recent congressional hearing where a congressman talked about replacing the Veterans Benefits Management System (VBMS. Mr. Murphy assured him there were no plans to replace VBMS.

Mr. Lowenberg commented on the importance of having a Veterans service organization (VSO) representative on ACDC. Mr. Murphy agreed.

Mr. Pamperin asked how VBA planned to handle the VASRD rollout, since all pending claims would have to be evaluated using the old schedule. Mr. Murphy acknowledged that the new rating schedule needed to be programmed into VBMS, which was expected to be time-consuming. Several body system revisions had been or were being published; the others were well advanced in the concurrence process. Dr. Shulkin was fully onboard with the revision of VASRD.

Would it be possible to get a briefing on where you see things and what metrics are used in the VBA? Mr. Murphy said he was looking at the appeals inventory, a new tool, and whether certain VBA personnel should be moved around. VA is currently under a hiring freeze; in the last month, the rate of employees lost dropped from 61 per pay period to below 40. Mr. Murphy has submitted a letter asking for an exception to the freeze. One metric VBA uses is time and transaction, which measures how many employees are available and how much work they should accomplish. Mr. Murphy has seen improvements across the board. VBA also uses the employee performance report, which records productivity.

Dr. Roberts commented that VA seemed to be managing things well, and expressed surprise that media coverage was mostly negative. Mr. Murphy said he once asked a reporter about this and was told that good news didn't sell.

Ms. Murphy asked for comment on customer satisfaction and call center feedback. Mr. Murphy said the blocked call rate had fallen from 60 percent in August to zero percent in February, when all calls were answered in less than one minute. Mr. Lowenberg asked how VBA was able to achieve that change. Mr. Murphy said it hired 300 people.

Mr. Murphy acknowledged he made a mistake by leaving a recent House subcommittee hearing after completing his testimony but before the hearing ended. He has since reached out to the subcommittee chairman and ranking member and promised to be in attendance from gavel to gavel at all future hearings.

<u>Compensation Service: 2017 Update</u>

Ms. Murphy gave the update. The Compensation Service has been in the contract exam business since 1998. It first had the authority to contract exams out through 10 ROs; that

authority was expanded to cover 12 a couple years ago, 15 last year, and all 56 offices this year. NWQ has allowed it to be more nimble.

Mr. Lowenberg asked if expanding contract exam authority had affected cost. Ms. Murphy said Compensation Service's primary source of funds has been mandatory funding; most of the discretionary funding was on the VHA side.

Overall, VHA has had the internal ability to complete 60 percent of all C&P exams for Veterans; this was not expected to change under the new contract. The ERRA tool is fed with VHA data on a daily basis. It directs claims examiners to order exams from VHA or a vendor, as appropriate. The exam cancellation rate has remained fairly constant.

Mr. Lowenberg asked if Compensation Service's ability to contract for exams would be affected if the continuing resolution continued beyond April. Mr. Pamperin said it should not because the funding source was mandatory.

Dr. Simberkoff asked what percentage of ROs was actually contracting out exams. Ms. Murphy said all ROs were using the ERRA tool before ordering an exam. They first ask if VHA can perform the exam, and if it cannot, they contract out. Mr. Pamperin asked if certain specialties would go to certain contractors by default. Ms. Murphy said VHA's internal capacity would be the determining factor; the contractors would merely supplement what VHA was unable to do.

Dr. Roberts commented that it took a long time for Veterans to receive mental health services, and asked if that was because of the rate of compensation VA was willing to pay contractors. Ms. Murphy said her understanding was that VHA did what was necessary to keep Veterans happy, healthy, and thriving.

Mr. Gammons said ERRA was a fantastic tool, but asked if VA was doing anything to better train the physicians. Ms. Murphy said historically VHA has had the responsibility of training for filing DBQs. Compensation Service intended to take over updating DBQs and preparing training materials.

Dr. Simberkoff observed that there was a trade-off between the most convenient location for the Veteran and the most efficient place to get things done. Ms. Murphy acknowledged there was a lot of empty office space in ROs; at least half the employees worked from home part or full time.

Twice a year Ms. Murphy holds a conference with service center managers. The first conference was held in January. The agenda included a segment on suicide awareness and prevention. VBA realizes suicide is a serious problem and not strictly a VHA issue. There are plans for more suicide prevention training in the ROs.

Dr. Simberkoff asked if VBA had data on suicide among Veterans with pending claims. Ms. Murphy said she did not have the data with her, but asserted that the suicide rate decreased sharply if the Veteran had some kind of contact with VA, particularly if the Veteran was female.

The Compensation Service is on track to have all the VASRD proposed rules published by the end of fiscal year (FY) 2017, and all final rules by the end of FY2018. Ms. Murphy agreed that the rollout would be a challenge, but pointed out the average time to process a claim had fallen to 112 days.

Mr. Manar noted that some Veterans filing claims might require a second exam, and asked about altering the DBQs so that the exam contained information for both the old and new rules. Dr. Vvedenskaya said VA could not include new criteria before the final rule was published, but DBQs did ask more questions than the current regulation stated.

Dave McLenachen is overseeing the policy and procedural aspects of appeals, as well as the operational oversight. Appeals personnel still live and work in the ROs and are under the oversight of the RO director, but receive their marching and claims processing orders from VA headquarters.

The 60-day comment period on the Camp Lejeune final rule was scheduled to end the following week, after which VA would be able to begin processing presumptives. Mr. Manar recalled hearing that over a million people went through the camp during the period in question. Ms. Murphy said there was still the question of whether those people were there for 30 contiguous days or not.

The Committee recessed for the day at 4:09 p.m.

Tuesday, March 7, 2017

Opening Remarks

Chairman Martin reconvened the meeting at 8:30 a.m. He stressed that the comments expressed were solely the opinions of the individuals providing them, and did not necessarily represent the position of the federal government, VA, or ACDC. He encouraged members to think about potential topics and speakers for future meetings. He reminded the Committee that it was not required to submit a report until the 2018 Biennial Report, but that it could submit an interim report this year if so desired. He asked participants to speak clearly and loudly for the benefit of those on the phone.

The Chairman raised the possibility of holding future meetings on Tuesday and Wednesday instead of Monday and Tuesday to accommodate members who had difficulty traveling over the weekend. He acknowledged that one member was unable to participate in Tuesday-Wednesday meetings because of educational commitments, but maintained the Committee should do what was convenient for most members. Several members suggested having some meetings outside Washington, D.C. Dr. Vvedenskaya reminded them that ACDC was a policy committee, and all of the policy experts were based in D.C. Chairman Martin said members would be asked to vote by email for the set of days they preferred. Dr. Vvedenskaya asked members to specify what time during the month of June they would be able to meet. She penciled in June 20-21 as possible meeting dates.

As always, the Committee will invite the Secretary and Chief of Staff to its June meeting. It is anxious to hear the new Secretary's top priorities.

Dr. Vvedenskaya reported reaching out to subject matter experts at VHA in January and requesting to form a fast-paced working group to review the diabetes code for the VASRD update. She expected the group to begin its work in April.

VASRD Update: Neurological Conditions and Convulsive Disorders

Dr. Reynolds gave the update. Laurine Carson, assistant director of the VBA Compensation Service, leads the VASRD regulations project team. Dr. Reynolds, Dr. Vvedenskaya, and Dr. Jerry Hersh are the medical officers. Eric C. Mandle, Jonathan D. Hughes, and Stephanie Li serve as consultants for regulations.

In 2003, GAO identified challenges in keeping disability evaluation criteria consistent with advances in medicine, technology, and the labor market. Earnings loss studies focused on VA's disability compensation program noted a need to modernize VASRD. In 2009 the USB initiated a project with the goal of revising and updating the 15 body systems in the VASRD.

The plan proposed to review each system by March 2017, a goal which has been met. Each system would then be reviewed in a staggered cycle so no published regulation would be more than 10 years old. That goal was later revised so that a published regulation would be no more than five years old.

Dr. Simberkoff noted that if the goal of revising each system every five years was met, an average of three systems would be revised each year. Dr. Reynolds said the VBMS software allowed for comparison between the old and new criteria. He hoped the first review would take care of much of the heavy lifting. Mr. Fay asked whether the existing infrastructure was capable of handling the continuous change that was envisioned. Mr. Lowenberg added that VA had continuous cost projection changes. Mr. Pamperin pointed out that there could be three different rating schedules to deal with in the event of an appeal. Dr. Reynolds acknowledged that VA needed to develop the institutional framework to update VASRD.

There are three phases to each VASRD body system review: working groups, development, and concurrence phases. Working groups were comprised of VHA and non-VHA clinicians, subject matter experts, and attorneys. VSO representatives were added to working groups in 2012. Working groups generally confer 20-30 times by teleconference and 2-3 times in face-to-face meetings depending on the extent and complexity of the VASRD body system. Each rating diagnostic code is evaluated for relevance, accuracy, obsolescence, medical and scientific advances, and levels of severity.

VBA drafts the legal and medical justification for each recommended system change. All changes are based on practice patterns, modern standards of patient care, and/or advances in the understanding of a body system.

Once drafted, the proposed regulation is reviewed by VA medical officers, regulation writers, attorneys, and other subject matter experts. Revisions, based on peer feedback, are incorporated into the draft prior to submitting for official concurrence.

Once the draft is complete, the official concurrence process begins. Each draft is comprehensively assessed inside and outside of VA for its medical, legal, and economic impact. The proposed regulation needs to be approved at each level of concurrence before it can proceed to the next.

In addition to VBA, the following offices in VA must concur with the draft: the Office of Regulation Policy and Management, the Office of the General Counsel (OGC), VHA, and the Secretary of Veterans Affairs. Outside VA it must meet the approval of the Office of Management and Budget (OMB) and the Social Security Administration. It also goes to the National Institutes of Health for a courtesy review.

Dr. Simberkoff asked what was done with something in between code adjustments. Dr. Vvedenskaya said the VASRD did not address acute conditions, but any disability that developed as a result of the acute condition would be evaluated under the appropriate body system and/or analogous coding.

For the neurological system, the working group phase was completed in February 2014. The development phase was completed in July 2014, restarted in August 2016, and completed again in December 2016. The Compensation Service concurrence phase was started in July 2014, restarted in December 2016, and completed in February 2017. The VBA concurrence phase started in July 2014, was aborted in May 2015 and returned to Compensation Service due to impasse, and restarted in March 2017.

Chairman Martin asked what VA was doing to expedite the concurrence process. Mr. Fay added that the Committee had made recommendations that each office have mandated time limits to review the draft. Dr. Vvedenskaya pointed out that OMB had a time limit of 30 days for review. Dr. Browne asked if there had been any feedback with regard to the deadlines. Chairman Martin said he had not heard any complaints.

Dr. Simberkoff asked what caused the delay for the neurological system. Mr. Pamperin asked if VBA had added more diagnostic codes. Dr. Reynolds said VBA had added more diagnostic codes and that the delay was caused by a disagreement over what medical updates should be present and where in the schedule they should be. Mr. Lowenberg asked about VA's concerns going forward. Dr. Reynolds said he was most concerned with following up on the recommendation for timelines and defining the role that everyone needed to play.

NWQ Update

Ms. Perez gave the update. She said not much had changed in the last three months; VA was in the process of testing the next release that would include non-rating claims. After that it would address the appeals workload. The next release, which included a diagnostic tool for improving the quality of work, was scheduled to occur in the next couple weeks.

Currently the work is distributed based on capacity, resources, and established priorities. VA is also working on the ability to route more local work to the ROs, while keeping in mind existing priorities. It is planning more robust rules that will allow it to increase the amount of work that goes to the local RO.

VA has seen a slight increase in the backlog of claims. There has also been a recent uptick in partial ratings.

Chairman Martin asked if NWQ was still on track to add appeals by March. Ms. Perez said the appeals had been delayed, but would most likely be implemented this fiscal year.

Mr. Fay asked if the same people were handling the rating and non-rating workloads. Ms. Perez said they were not supposed to, although some non-rating end products (EPs) required a rating decision.

Dr. Simberkoff asked about the time period between a rating and an award. Ms. Perez said in some cases a claim required a waiting period, but the average time to process an award was 3.8 days.

Mr. Pamperin asked if the political environment permitted ongoing discussions with Congressional staff. Ms. Perez said VA received frequent requests for information from Congress, but generally did not initiate dialogue.

Chairman Martin recalled Ms. Perez reporting at the December ACDC meeting that she had added seven employees, increasing her staff to 24. He asked if that level remained constant, and whether more hires were necessary. Ms. Perez said there were still 24 employees, and that so far it was working well.

Mr. Fay asked if the information technology (IT) workers were still being responsive. Ms. Perez said there was a good sense of collaboration among the different offices at VA, but that things could always run faster.

Mr. Manar asked if the NWQ included any portion of the pension workload. Ms. Perez said whatever was controlled by VBMS was included. Mr. Manar then asked if there were any changes to NWQ scheduled for March. Ms. Perez said upcoming changes included the functionality to include the non-rating EPs and several other improvements.

Dr. Roberts said he had missed the recent ACDC tour of NWQ, but that he was anxious to see it. Dr. Vvedenskaya said that could be arranged when the Committee brought on new members.

The Committee recessed from 10:39 a.m. to 11:01 a.m.

Opportunity for Public Comments

There were no written public comments. Jerry Manar, a Veteran who recently retired from VFW, said he was disturbed by Mr. Sampsel's presentation on Agent Orange. In one instance it conflated a lack of evidence of exposure with evidence of no exposure. It was openly dismissive of evidence of herbicide usage while extolling the virtues of Alvin Young, whom many regard as a biased source. Mr. Manar also commented on a remark by Mr. Sampsel that the Secretary would probably deny the creation of a presumptive for hypertension. He felt this position was taken largely for budgetary reasons, and if the Secretary were to grant a presumptive it would help tens of thousands of Veterans.

C&P Contract Examinations Update

The Committee moved this item up in the agenda so Dr. Simberkoff could participate in the discussion. Dr. Vvedenskaya reviewed Ms. Miller's presentation to ACDC at its December meeting while awaiting her arrival.

Ms. Miller gave the update. She was assisted by Ms. Connally, Ms. Hussein, Mr. Schell, and Ms. Glenn. 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 in 10 ROs. PL 113-235, passed in 2014, authorized the expanded use of contract medical examinations to 12 ROs in FY2015, 15 in FY2016, and all 56 in FY2017.

$6.8 billion in mandatory funding have been provided to support exam contracts for the base year and four option periods of performance. The annual contract maximum for FY2017 is 1.2 million exam requests. The program includes quality reviews, verification of examiner licensing, ownership of DBQs, and designated points of contact assigned to each RO for exam questions and issues.

The contract was originally awarded on March 23, 2016, when ramp-up periods in Districts 6-7 began. Protests were filed in regards to District 1-5 awards which were upheld by GAO. The subsequent award date was September 16, 2016. GAO upheld the VA decision on January 6, 2017. Complaints were filed with the Court of Federal Claims on January 11, 2017. A decision is expected by June 24, 2017. A stop-work order has been issued.

To prevent a lapse in contract exam service, Compensation Service implemented a bridge contract across Districts 1-5 effective January 13, 2017. VBA Bridge 2.0 provides multi-vendor contract coverage across the country. VHA workload and timeliness are consistently monitored, and Veterans can request to be seen by VHA versus a contract examiner.

Dr. Roberts asked if the contracts were with individual doctors or companies. Ms. Connally said they were with five companies that then did the subcontracting work with individual physicians. She added that this arrangement seemed to make the most sense from a cost-benefit standpoint.

District 6 provides coverage for the Integrated Disability Evaluation System (IDES) and Pre-Discharge Programs such as Benefits Delivery at Discharge (BDD) and Quick Start by submitting exam requests through QTC. District 7 provides coverage for IDES and the BDD Program outside the continental United States by submitting requests through VES.

Dr. Simberkoff asked about the average number of disabilities claimed. Ms. Miller verified that VA had experienced a consistent increase in the number of contentions. Mr. Pamperin pointed out that that figure was probably just for original claims. Ms. Miller promised to obtain that information and report back to the Committee. Mr. Lowenberg asked what kind of feedback VA had received during the early phases, and what training was given to the contract division. Ms. Miller said the feedback had been mixed. She added that the vendors or contracted medical examiners were required to complete the same training as their counterparts in C&P or VHA.

Dr. Simberkoff asked if age seemed to be a factor in whether a Veteran went to VA or a contractor. Ms. Miller said she was not sure that data was readily available but promised to follow up. Mr. Lowenberg asked what contract remedies were available for dealing with an underperforming examiner. Ms. Connally assured him that staff monitored all complaints closely. Dr. Roberts asked how well the program was going and what could be done to improve it. Ms. Glenn felt she could not evaluate the program until the main contract had been awarded. Chairman Martin asked if there was an expiration date for funding the contract. Ms. Glenn said it was supposed to be five years, but that five-year period had not yet started. Mr. Lowenberg asked what percentage of exams was handled by a contractor. Ms. Miller said the VHA handled about 60 percent of exams. Dr. Simberkoff hypothesized that the rate varied considerably according to region; Ms. Miller agreed.

In preparation for contract expansion in FY2017, VA reviewed its legal authorities and identified two issues. The first was that mandatory funding could not be used to pay for the Beneficiary Travel (BT) Program. To resolve this, VBA proposes to amend the C&P appropriation language to include BT associated with the pilot program for C&P contract exams. The proposal has no cost and would not change the funding source for any of VA's other BT. The other issue was that neither VBA employees nor contractors could process or pay BT claims. A working group with participants from VBA, VHA, OGC, and Acquisitions was formed to address this issue. Contract modifications will be put in place once litigation is resolved. VBA proposes to develop a rules-based processing system that provides specific data points required for all BT claims to be automated.

Mr. Pamperin pointed out that there was no line item for conducting exams in VHA. Dr. Simberkoff noted that it was always considered part of the mission to serve the Veteran. Mr. Pamperin observed there were two vendors for each area. Ms. Miller said that that was the goal under the new contract. Mr. Pamperin asked how exams would be assigned. Mr. Schell said VA was currently utilizing the ERRA tool.

The Committee recessed from 12:27 p.m. to 1:05 p.m. for lunch.

Afternoon Session

VASRD Review Update

Ms. Carson gave the update. She announced that Christi Greenwell, the Compensation Service's procedures assistant director, retired in December. Ms. Carson had transferred from the policy staff to the procedures staff. She was assessing how to create efficiency between the policy and procedures groups and working on implementing several initiatives for Mr. Murphy. Her office was working on priority regulations, including VASRD. Work had begun on the revised VASRD implementation.

The gynecological, eye, musculoskeletal, genitourinary, endocrine, and dental/oral rules had gone to OGC for legal review. Of those, the genitourinary and musculoskeletal rules were the only two that were not final.

The hemic/lymphatic rule had received a lengthy public comment from the American Society of Hematology. The staff hematologist in Compensation Service was able to address most of the concerns. OGC had returned the skin rule for additional comments.

Compensation Service hoped to have final rules published by the end of the year. The endocrine rule did not include diabetes, which would be addressed separately.

VA missed the first deadline for revision in 2016, partly because of leadership changes. However, when Ms. Carson came onboard, she reestablished the deadlines and the timeline for work, and Compensation Service was on schedule to have all proposed rules published by the end of the year.

Mr. Pamperin asked if the rules were receiving many comments. Ms. Carson said it varied. Dr. Vvedenskaya added that the proposed rules received an average of eight comments. Dr. Simberkoff asked about the status of the infectious disease rule. Ms. Carson said it was in concurrence, being reviewed by the Disability Assistance Group.

The VASRD reviewers had received many recommendations to look at other ways to label diagnostic codes, but Compensation Service intended to stick with its current system because any change would require altering IT infrastructure and business practices.

Compensation Service has contracted with a project manager for GYN and oral/dental. The project manager is in charge of coordinating meetings and ensuring implementation of a rule no later than 60 days after it is published. Ms. Carson anticipates having updates in the system in time for the August IT release.

Ms. Carson has taken an initiative to try to establish an operating procedure for concurrence. She felt there should be a timeline so people could anticipate how long it would take to move through the process. Dr. Vvedenskaya pointed out that VBA Chief of Staff Mike Frueh was aware of Ms. Carson's initiative and fully supportive. Ms. Carson added that she would brief Mr. Frueh on the VASRD the following week.

Chairman Martin asked about the earnings loss study contract. Dr. Vvedenskaya said that the bidding would be open to small Veteran-owned businesses shortly and to the general public soon thereafter.

Compensation Service has requested data for its total disability individual unemployability (TDIU) study. It has merged data between the known Veteran population receiving IU benefits and Census Bureau data on earnings and demographic information. An analysis will be submitted on March 17. Several VA offices are working on this. Ms. Carson wants to make a program change that makes sense but is data-driven.

Adjournment

Chairman Martin encouraged members to propose topics for future meetings if they had not done so already. Dr. Vvedenskaya said she was assembling a wish list which she promised to email members as soon as possible, along with a request to confirm availability for June 20-21.

There being no further comments, Chairman Martin adjourned the meeting at 2:09 p.m.

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

Ioulia Vvedenskaya, Committee DFO

Joseph Kirk Martin, Jr.
Committee Chairman