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ARTICLE: Preservation, Modification, or Transformation? The Current State of the Department of Veterans Affairs Disability Benefits Adjudication Process and Why Congress Should Modify, Rather than Maintain or Completely Redesign, the Current System *

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LEXISNEXIS SUMMARY:

... In 1917, when the United States entered the conflict in World War I, veterans' programs provided benefits such as disability payments, vocational rehabilitation for disabled veterans, insurance for veterans and active duty servicemen, and support for families of those servicemen. ... In addition, the VA should give its staff production incentives for quality and accuracy in rendering decisions, as opposed to just the number of claims processed. ... Modernization of the Current System: Ratings Schedules and Information Technology Modification of the current VA benefits adjudication process is also needed with regards to modernization of the current disability Ratings Schedule and information technology systems. ... In response, John Hall (D-NY), Chairman of the House Veterans' Affairs Disability Assistance and Memorial Affairs Subcommittee, commented that

VA's long-range IT plans will not end the current backlog, but are clearly critical to the solution of updating and improving VA's antiquated claims processing system and to providing VA employees with 21st century tools to deliver the most accurate outcomes when adjudicating our veterans' disability claims. ... Although the existence of the CAVC for the past twenty years has, arguably, significantly

improved the veterans' benefits claims adjudication process by providing for meaningful judicial review, in a system already overwhelmed with delays, many veterans perceive the CAVC as further exacerbating this problem.

TEXT:

[*1] Introduction

Looking like a spokesman for the "Army Strong" campaign, Tim Sanders, a veteran who recently served tours of duty in both Iraq and Afghanistan, walked up and down the sidewalk in front of the Colmery-O'Neil VA Medical Center in Topeka, Kansas, holding a placard proclaiming, "Vets are losing their benefits." n1 Upon further inquiry into Sanders' picketing, a representative from Congresswoman Nancy Boyda's (D-KS) office stated that veterans from the district, like Sanders, who have complaints about the current veterans' system frequently contact the office. n2 The representative added that "almost every VA employee [we] deal with is well-intentioned. The problem is the system." n3

The system the representative was referring to is the current Department of Veterans Affairs (VA) benefits adjudication process. n4 Recently, the current system has been the victim of much criticism due to an outdated ratings [*2] system, delayed processing times, and a seemingly insurmountable backlog of claims. n5 Furthermore, as the population of veterans from past conflicts age and more veterans return from Iraq and Afghanistan, the VA is expecting a growing number of claims in the immediate future. n6 Specifically, with regard to the current conflicts in Iraq and Afghanistan, more veterans are surviving and coming home with disabilities than in past conflicts. n7 Protective equipment, frontline emergency medicine, and medical evacuation techniques are improving, such that more seriously injured service members are surviving at a higher rate, and thus more claims for veterans' disability benefits will be filed. n8

Due to the growing number of wounded and disabled veterans, critics have raised serious questions as to whether the current benefits adjudication process can handle an increase in claims. n9 In response to these questions, numerous proposals have been suggested. n10 For example, in July 2007, the President's Commission on Care for America's Returning Wounded Warriors issued a report detailing how to redesign the current VA and Department of Defense (DOD) benefits systems. n11 Similarly, from May 2005 until October 2007, the Veterans' Disability Benefits Commission "conducted an in-depth analysis of the benefits and services available to veterans" and issued extensive recommendations that it believes should guide the development and delivery of future VA benefits. n12 Conversely, many working within the current system [*3] appear to be resistant to change, and Congress does not seem willing to implement an overhaul of the system. n13

Nonetheless, few believe that the current system for administering benefits should be wholly maintained. n14 Thus, the remaining question is what should be done to remedy the system. This Article will argue that, to address the VA's current problems with its benefits adjudication process, Congress should modify, rather than completely redesign or maintain, the current system. Most of the problems with the current benefits adjudication process stem from the cumbersome claims processing system and a significant backlog of cases, rather than the substantive requirements involved in filing a claim for disability benefits. Thus, a completely redesigned system would exacerbate rather than alleviate these particular problems, and maintaining the system would not address them at all. Redesigning the current system would require those working within the system to take time away from the adjudication of claims to learn the new system, resulting in further delays in claims processing, and therefore a further increase in the backlog of claims. Similarly, maintaining the current system would preserve the status quo, which includes lengthy delays and high veteran dissatisfaction.

Moreover, the current system is not in need of complete reform. There are large numbers of disabled veterans who have their claims approved and receive their compensation benefits without the need to file an appeal. n15 In addition, VA properly denies many meritless claims. n16 Thus, completely redesigning the current benefits adjudication procedure would be a waste of valuable funding that could be better utilized modifying only the parts of the system that

are in need of repair. This Article advocates that the most efficient use of resources is to direct legislation and funding toward modifications that will improve claims processing time and contribute to lessening the sizeable backlog of claims.

Part I of this Article provides an overview of veterans' benefits in the United States, from the settlement of Plymouth Colony to the present. Part II discusses the VA benefits adjudication process, including processing at the local Regional Office level, the Board of Veterans' Appeals, the Court of Appeals for Veterans Claims (CAVC), and United States Court of Appeals for the Federal Circuit. Part III describes the current state of the benefits adjudication process, including its current difficulties with lowering claims processing time and its substantial backlog of claims. Part IV addresses specific modifications that [*4] should be made to the current VA benefits adjudication process, focusing on improvements to the claims processing procedure and methods to eliminate the backlog of claims, as well as how such modifications will improve the current system. The suggested modifications include enhancements at the Regional Office level, updating the current Ratings Schedule and information technology systems, lowering the CAVC's high remand rate, and educating service members about VA's benefits adjudication process upon entering, as opposed to separation from service.

I. A Brief History of Veterans' Benefits in the United States

The practice of providing veterans' benefits in the United States is older than the country itself. n17 Indeed, the first instance of providing veterans benefits on American soil occurred in 1636, when members of Plymouth Colony provided money to those disabled in the colony's defense against Native Americans. n18 In 1776, as a means of encouraging enlistments and curtailing desertions, the Continental Congress passed the nation's first pension law. n19 In 1789, with the ratification of the United States Constitution, the first federal pension legislation was passed. n20 The pension program expanded in the early nineteenth century to care for all needy veterans of the American Revolution. n21 Therefore, since its inception, "American veterans' benefits programs have provided for both disabled and needy veterans." n22

After the Civil War, the number of veterans in the United States greatly increased, and accordingly, so did the demand for veterans' benefits. n23 In his second inaugural address in 1865, President Lincoln called upon Congress to "care for him who shall have borne the battle and for his widow, and his orphan." n24 With these words, President Lincoln affirmed the government's obligation to care for those injured during war and to provide for the families of those who perished on the battlefield. Accordingly, the Veterans Administration adopted Lincoln's words as its motto in 1959. n25

[*5] In 1917, when the United States entered the conflict in World War I, veterans' programs provided benefits such as disability payments, vocational rehabilitation for disabled veterans, insurance for veterans and active duty servicemen, and support for families of those servicemen. n26 In response to the large number of returning World War I veterans, Congress, in 1921, created the Veterans' Bureau to consolidate veterans' programs managed by three different agencies, although the consolidation left two remaining agencies administering veterans' benefits as well. n27 Congress consolidated these various programs in 1930, when President Herbert Hoover signed Executive Order 5398, which created the Veterans Administration. n28 Shortly thereafter in 1933, Congress created the Board of Veterans Appeals (BVA or Board) within the Veterans Administration to review claims of dissatisfied veterans seeking benefits. n29 In 1988, legislation was passed by President Ronald Reagan that elevated the Veterans Administration to cabinet status, and on March 15, 1989, the Veterans Administration became the Department of Veterans Affairs (VA). n30 Currently, the VA is the second largest of the fifteen Cabinet Departments, second only to the Department of Defense. n31

II. The Current Benefits Adjudication Process for VA Disability Benefits

In order to receive disability benefits, a veteran must first file a claim at one of fifty-eight VA regional offices (RO) located throughout the United States and its territories. n32 The claim is then reviewed by a three-person rating board

of the VA RO. n33 This rating board consists of a "medical specialist, a legal specialist, and an 'occupational specialist.'" n34 Every claimant has the right to a hearing, representation, and written notice of the decision made [*6] on the claim. n35 Proceedings before the rating board are *ex parte*, and pursuant to 38 C.F.R. § 3.159, the VA has a duty to assist the veteran in developing the facts pertinent to the claim and to notify the veteran of any information and medical or lay evidence that is necessary to substantiate the claim. n36 In analyzing the claim, any reasonable doubt must be resolved in favor of the veteran. n37 Once a decision has been made, the RO must notify the veteran of its determination through a ratings decision, which includes: the decision that was made, any applicable effective date, the reason(s) for the decision, the right to a hearing on any issue involved in the claim, and the necessary procedures and time limits to initiate an appeal of the decision. n38

A veteran may challenge a RO decision by filing a notice of disagreement with the RO. n39 While there is no specific format required for a notice of disagreement, it must be in writing, "expressing dissatisfaction or disagreement" with the RO's decision and "a desire to contest the result." n40 In response, the RO will either reconsider the claim or uphold the original adverse determination and issue a statement of the case. n41 A statement of the case outlines the decision and provides a list of the evidence reviewed, the legal basis for the decision, and a summary of the reasons for the decision. n42 The statement of the case is also the RO's final action. n43 A veteran who is dissatisfied with this decision has the option of filing a substantive appeal with the BVA up to sixty days after the RO issues the statement of the case. n44

If a veteran chooses to file a substantive appeal, the BVA will review the benefits sought on appeal. n45 Applications for review are docketed in the order in which they are received and considered in docket order. n46 Once a Board member reviews the claim, the BVA may allow the appeal, deny the appeal, or remand the case back to the RO for further development of the record. n47 The BVA is required to base its decision on "the entire record in the proceeding [*7] and upon consideration of all evidence and material of record and applicable provisions of law and regulation." n48 Prior to 1988, the BVA's decision was final and was not subject to judicial review. n49

In 1988, Congress passed, and President Ronald Reagan signed into law, the Veterans' Judicial Review Act, creating the United States Court of Veterans Appeals as an Article I court. n50 In 1999, the name of the Court was changed by the Veterans' Programs Enhancement Act of 1998 to what it is known as today, CAVC) n51 Pursuant to the Act, the CAVC is independent of the VA. n52 It is composed of seven judges, appointed by the President and confirmed by the Senate to fifteen-year terms. n53 The CAVC has the exclusive "power to affirm, modify, or reverse a decision of the [BVA] or to remand the matter, as appropriate." n54 However, the scope of the CAVC's review is limited. n55 For example, only dissatisfied claimants may appeal a BVA decision to the CAVC; for the government, the BVA is the final decision-maker. n56 In addition, the CAVC may not make initial factual determinations and does not have jurisdiction to review the VA's schedule of ratings for disabilities. n57 The CAVC can only reverse a finding of material fact adverse to a veteran if the finding is clearly erroneous. n58

Just as a veteran aggrieved by a final decision of the BVA can appeal to the CAVC, a veteran aggrieved by a final decision of the CAVC may appeal to the Federal Circuit, and ultimately, to the United States Supreme Court. n59 Pursuant to 38 U.S.C.A. § 7292(c), the Federal Circuit has exclusive but [*8] limited jurisdiction to review decisions of the CAVC. n60 Specifically, the Federal Circuit has "exclusive jurisdiction to review and decide any challenge to the validity of any statute or regulation or any interpretation thereof brought under this section, and to interpret constitutional and statutory provisions, to the extent presented and necessary to a decision." n61 However, "except to the extent that an appeal under this chapter presents a constitutional issue, the Court of Appeals may not review (A) a challenge to a factual determination, or (B) a challenge to a law or regulation as applied to the facts of a particular case." n62

III. The Current State of the VA Benefits Adjudication Process

As of December 2007, approximately 74.5 million people are veterans, or family members or survivors of veterans, and hence may be eligible to receive VA benefits. n63 For fiscal year 2008, President Bush requested an \$ 87 billion

budget for VA. n64 However, the VA is currently facing its highest caseload ever, and as a result, is experiencing increasing delays in the processing of claims. n65

The current backlog of disability claims is estimated to be approximately 650,000 disability claims, and the VA expects that number to grow to one million additional compensation and pension claims by the end of 2008. n66 Since 2006, the average time for the VA to process a claim has grown from 177 days to 183. n67 Furthermore, the average time to process an appeal is 657 days. n68 As the backlog grows and the time to process claims increases, satisfaction with the current VA system continues to plummet, and hardship to veterans continue to increase. n69

The problems of backlogs and increased delays in processing claims also extend to the CAVC. n70 With 2,542 appeals filed in the first six months of 2007, [*9] the CAVC was one of the busiest federal appellate tribunals. n71 Comparatively, the CAVC saw 3,729 total cases for the previous fiscal year. n72 Accordingly, the CAVC was forced to recall five retired judges to hear this onslaught of appeals by veterans. n73 In addition to recalling retired judges, the CAVC has also begun using an electronic case filing system to reduce paperwork. n74 However, these steps will most likely prove inadequate, because the CAVC's current caseload does not include the cases filed by veterans returning from Iraq and Afghanistan, since many of those cases have not yet reached the appeals level. n75 Furthermore, Judge William P. Greene Jr., who currently presides over the CAVC, has stated that the cases of veterans returning from Iraq and Afghanistan are increasingly complex, most notably those concerning post-traumatic stress disorder (PTSD) and traumatic brain injury (TBI). n76 This will most likely result in an increase in the time needed to process these claims. n77 Thus, the number and complexity of claims filed with the VA, the BVA, and the CAVC is likely to keep increasing. n78

To address the issue of delayed processing times and backlogs, the House Veterans' Affairs Disability Assistance and Memorial Affairs Subcommittee proposed the Veterans Disability Claims Modernization Act of 2008. n79 The bill would reform the benefits claims processing system at the VA and would ensure the accurate and timely delivery of compensation to veterans, their families, and survivors. n80 Testimony of disabled veterans, their families and survivors revealed that the most common criticism of VA benefits were claims processing delays and denials. n81 The proposed bill has three parts: (1) updating the disability compensation system; (2) improving the transition from active duty service to veteran status; and, (3) annually monitoring the CAVC's workload and granting the CAVC the authority to affirm, modify, reverse, or vacate and remand decisions of the BVA. n82

[*10] IV. A Practical Solution: Congress Should Modify, Rather than Completely Redesign or Maintain, the Wes Benefits Adjudication Process

Criticism of the VA's benefits adjudication procedure is not a new topic. n83 In fact, William F. Fox, Jr., the leading scholar of veterans' law in the United States, has stated that "[t]here are few persons who believe that the current system for administering these benefits is working properly. We ought to fix it." n84 He further added, "[t]here is very little pressure from the American public to fix the system," as "[v]eterans themselves are not always a popular or politically-correct group." n85 Thus, reforming the VA has continuously taken a backseat to other issues before Congress. n86

Despite current criticisms, there have been periodic attempts to reform the VA that have significantly improved the system. n87 For example, the imposition of judicial review in 1988 has proved extraordinarily beneficial in guaranteeing veterans their constitutional right to a day in court, as well as improving notions of general fairness and due process protection within the veterans' appeals process. n88 Similarly, observers have noted both higher quality opinions from this tribunal as well as faster issuance of opinions from the RO and BVA, despite the current backlogs due to increasing claims. n89 Another noted improvement is fewer remands, because the BVA is authorized to more thoroughly develop the evidentiary record. n90

[*11] Nonetheless, there has been recent discussion about completely overhauling the current VA benefits adjudication process. n91 However, a complete overhaul of the current VA system would further frustrate the VA's

current problems. The most frequently voiced complaints about the current VA benefits adjudication process are in reference to the lengthy delays experienced while claims are being processed and appealed. n92 If a completely new system were implemented, a significant amount of time and resources would need to be devoted to educating and training those currently involved in the benefits adjudication process how to utilize and implement this new system. Such time taken up by training and learning new procedures would be time taken away from processing veterans claims. Thus, the most effective way to improve the current VA benefits adjudication process is to continue to modify and make necessary improvements to the current system, rather than completely destructing the current system and starting from scratch. Most notably, modifications should be made in the areas of improving claims processing time, updating the current compensation system, improving the CAVC, namely by lowering its excessive remand rate, and increasing education for those entering the service about VA benefits.

A. Improved Claims Processing Time

As stated above, the most prevalent complaint about the VA benefits adjudication process is the amount of time taken to process claims. n93 There are several steps the VA can take to address this problem. First, Congress should increase the VA's funding to allow them to hire additional staff. In addition, the VA should give its staff production incentives for quality and accuracy in rendering decisions, as opposed to just the number of claims processed. Furthermore, BVA's proposed Expedited Claims Adjudication Initiative Pilot Program should be implemented at the RO level and closely monitored to determine its effective rate. Depending on the Program's success, the VA should implement it in ROs throughout the country.

Ultimately, the VA is limited by its budget. n94 Many of the VA's current problems relate to "a simple shortage of properly-credentialed, adequately trained personnel." n95 Furthermore, RO decision-makers are evaluated on [*12] their production rates, rather than the quality and accuracy of the decision rendered. n96 While funding and resources to support programs for service-disabled veterans are necessary, Congress must also ensure that the burden on the nation in implementing such financial support is reasonable. n97 Nonetheless, "[i]t is the duty of Congress and the VA to ensure that the benefits and services for disabled veterans and their survivors are adequate to meet their intended outcomes." n98

Undeniably, the VA must hire new staff and train them properly to produce accurate and timely decisions. n99 In testimony before the full House Committee on Veterans' Affairs, VA Secretary James Peake stated that the goal is to reduce processing times by the beginning of 2009, from approximately 180 days to 145 days. n100 Secretary Peake also cited aggressive efforts to hire new staff, noting that the VA will have hired the 3,100 new staff authorized by Congress in recent funding cycles by 2009. n101

However, the VA must realize that the hiring of new staff alone will not solve its problems. On average, it takes two or three years for newly hired decision-makers to become fully productive. n102 Thus, increased staffing levels do not produce immediate production improvements. Therefore, in addition to hiring new staff, the VA must also implement adequate supervisory and training procedures to monitor the decision process of its existing staff. Improving the work-product of the VA's existing staff members is also currently a matter of utmost importance due to the increasingly complex nature of cases coming before the VA. n103 In addition to the "Challenge" training program currently in place, n104 RO decision makers should be closely monitored and mentored by senior staff members, particularly for the first six months to one year of VA employment. The benefits of direct supervision include: (1) further assurance that each decision maker analyzes each claims file properly and expeditiously; [*13] (2) preventing the development of bad habits due to uncertainty on the part of decision makers; and, (3) the imparted knowledge of those working within the system's goals of increased quality and production. All RO decision makers should be subject to performance review based on standards prescribed by Congress regarding productivity and accuracy. Failure to meet the prescribed standards should result in termination of employment. Conversely, exceeding the prescribed standard should be recognized through the use of employee incentives, such as cash bonuses or paid vacation time.

As mentioned above, to best achieve both an increase in production as well as quality, Congress should adopt a

statutory timeframe for which a claim at the RO level must not only be processed, but also processed properly and thoroughly. To enforce this measure, claims not decided within the prescribed time period, but for good cause, should be deemed granted in full. The same remedy should apply to cases that the RO mishandles or does not fully develop. In addition, agency funding should be contingent on the VA achieving its goals of timeliness and accuracy.

Mandates such as the one described above have proved successful in other government agencies. n105 For example, within the Environmental Protection Agency (EPA), permit issuance by operation of law may occur where the agency has a period of time for objection and no objections are made. n106 Similarly, within the Food and Drug Administration (FDA), a drug test is deemed approved as a result of FDA inactivity. n107 Thus, a similar system imposed on the VA would likely produce comparable favorable results.

A prescribed statutory timeframe to produce a decision and do so accurately would greatly improve the current system. An incentive for accuracy would result in more thorough and well-developed claims, which in turn would prevent numerous cases from being remanded back to the RO and lingering in the system for several years. Reducing remands would significantly reduce the number of backlogged claims, and thus would also contribute to the issuance of more timely appeals. n108

The April 16, 2008 Federal Register lists the Board of Veterans' Appeals Expedited Claims Adjudication Initiative Pilot Program, in its Proposed Rules section. n109 The objective of this proposal is to "provide a model to streamline the VA claims adjudication and appeals process systemwide and to obtain [*14] resolution of individual claims and appeals at the earliest time possible in order to provide final decisions to veterans and their families with regard to their claims for benefits." n110 Because the proposed program appears to directly address the problems most seriously affecting the VA, the program should be closely studied to see if it does, in fact, help accelerate the processing of all claims and appeals. If successful, the VA should implement the program nationwide. As stated above, doing so would improve the current system by accelerating the processing time of all claims and appeals, which will in turn lessen the VA's extensive backlog of claims.

B. Modernization of the Current System: Ratings Schedules and Information Technology

Modification of the current VA benefits adjudication process is also needed with regards to modernization of the current disability Ratings Schedule and information technology systems. Many aspects of the VA system have become increasingly complicated over the years. n111 Congress has recognized that, due to a patchwork of programs and continuous, haphazard additions to rules and policies, "[the] VA's current system is heavily paper-based, overly and relies on WWII paradigms to develop and adjudicate disability claims." n112 Thus, as the current processing system has been in use for over sixty years, n113 it is time to retire this system and update existing policy and programs.

It is imperative that the VA address its information technology requirements and implement the necessary modifications. However, as cautioned by the Report of the President's Commission on Care for America's Returning Wounded Soldiers, Congress and the VA should "recognize that information technology is not the 'silver bullet' that will solve various quality, coordination, and efficiency problems within the . . . system []." n114 The Report further cautioned that "[u]nderlying organizational problems must be fixed" before attention can be turned to information technology; otherwise, technology implemented will merely perpetuate these problems. n115 Accordingly, modernization of the current processing system will be discussed first, followed by a discussion of how information technology can assist in implementing this modernization.

[*15] As previously noted, the VA compensates veterans for injuries and diseases acquired or aggravated during military service. n116 The VA uses a "Schedule for Rating Disabilities" or "Ratings Schedule" to calculate benefits. n117 The Ratings Schedule consists of "slightly more than 700 diagnostic codes organized under 14 body systems, such as the musculoskeletal system, organs of special sense, and mental disorders. n118 For each diagnostic code, the schedule lists criteria for determining a "percentage rating," based primarily on "loss of function of a body part or system, as verified by medical evidence." n119 In 2007, the amount of monthly compensation to a veteran, without

dependents, ranged from \$ 115 for a 10 percent disability rating to \$ 2,471 a month for a total (100 percent) disability rating. n120 However, the Ratings Schedule currently in use is severely outdated and is in need of comprehensive updates.

The Ratings Schedule currently in use by the VA has not been completely amended since 1945, although some portions have been updated within the last twenty years. n121 The Ratings Schedule still uses certain "diagnostic categories, terms, tests, and procedures" that are obsolete, while failing to recognize more modern diagnostic categories. n122 In other cases, the diagnostic categories are current but do not specify appropriate procedures to measure the pertinent diagnostic criteria for the disabling conditions. n123

It is of utmost importance that Congress be proactive about this topic and command the VA to update this outdated schedule for rating disabilities immediately. This is because United States military personnel are returning from Iraq and Afghanistan in large numbers, and the current Ratings Schedule does not address a number of new injuries frequently suffered by these veterans. n124 For example, "[t]he main cause of injury in Iraq has been blasts from roadside bombs, resulting in a characteristic or 'signature' set of multi-system injuries" likely to cause "brain injury, blinding, hearing and vestibular impairment, nerve and organ damage, burns, and amputation of one or more extremities, some or all of which can happen to one person." n125 Accordingly, the VA should [*16] adjust the Ratings Schedule in order to specifically accommodate the specific types of multi-system injuries suffered by troops in the Middle East. n126

Similarly, a number of veterans returning from Iraq and Afghanistan suffer from PTSD and TBI. n127 Thus, any revisions to the Ratings Schedule should focus on those portions that are most pertinent to today's veterans, instead of the areas that may not have been updated in quite some time, but are less relevant. n128 Accordingly, the first priority should be to revise the mental health and neurological body systems categories to address the large number of veterans returning from Iraq and Afghanistan with disabilities such as PTSD and TBI. n129

In order to modernize the Ratings Schedule, Congress should require that the VA review and update the entire schedule as needed over the next several years, and carefully monitor the progress of these updates. n130 There has been some argument that the Ratings Schedule should be reviewed and updated at frequent and regular intervals. n131 However, in terms of necessary VA modifications, frequent and regular review should not be Congress's top priority. Although the Ratings Schedule is in need of updates, the VA's resources are limited and should therefore focus more specifically on ensuring expeditious updates where they are needed most, in the areas that will assist the largest number of veterans. Instead, Congress should make the Ratings Schedule updated on an as needed basis.

Once a plan for a modernized Ratings Schedule is in place, Congress should turn its attention to information technology that will help better implement these updates. Recently, the VA Deputy Under Secretary for Benefits, Michael Walcoff, testified at a House Veterans' Affairs Subcommittee hearing that "IBM Global Business Services . . . was contracted by [the] VA in October 2007 to provide an independent study of the VA's claims processing system." n132 As a result of this study, Walcoff stated that the VA "plans to transition to a paperless processing environment both internally and externally to help reduce the [*17] claims backlog and process claims more efficiently." n133 In response, John Hall (D-NY), Chairman of the House Veterans' Affairs Disability Assistance and Memorial Affairs Subcommittee, commented that

VA's long-range IT plans will not end the current backlog, but are clearly critical to the solution of updating and improving VA's antiquated claims processing system and to providing [VA] employees with 21st century tools to deliver the most accurate outcomes when adjudicating our veterans' disability claims. These changes are long overdue. n134

Hall is certainly correct in his assertion that changes to the VA's information technology systems are long overdue. n135 Revising the current Ratings Schedule so that it is more in-line with current medical technology as well as veterans' needs will facilitate decision-making at the RO level, because the new Ratings Schedule will be more

applicable and understandable. n136 This will cut down on time spent processing claims and will improve the quality of decisions, since the new regulations will be specifically tailored to many of the new claims. n137 An updated Ratings Schedule would also most likely lead to a decrease in the number of appeals filed because the use of a more accurate Ratings Schedule will result in more accurate decisions. n138 Furthermore, by taking a proactive approach and anticipating how to more efficiently handle the claims of returning veterans from Iraq and Afghanistan in the years to come, future cases will be processed more quickly and easily, thus eliminating future backlog. Therefore, in addition to benefiting the veteran, a modernized Ratings Schedule would also contribute to a decrease in the current and future backlog of cases.

Improved information technology systems would also greatly enhance the current system. VA's current claims adjudication process is quite cumbersome; it is paper-based and requires a significant amount of time to acquire and sort through various documents. n139 Paperless processing would significantly reduce the amount of time required to sort through a claims file, n140 and thus would also promote greater efficiency in claims processing, as well as to [*18] alleviate some of the current backlog of cases. Paperless processing and other information technology services would also improve the quality of decisions produced by monitoring decision statistics, and therefore ensuring consistency amongst the various RO's in the decisions rendered. n141

C. Improvements to the CAVC: Decision Making and Deadlines

As previously noted, the CAVC is an Article I Court that has exclusive jurisdiction to review final decisions by the Board of Veterans' Appeals. n142 Pursuant to 38 U.S.C. § 7261(a), the CAVC has the full scope of review available to Article III courts reviewing administrative decisions; it can review questions of law, set aside decisions that are arbitrary and capricious, and reverse factual findings that are clearly erroneous. n143 However, for the last several years, as the CAVC's docket continues to grow, there has been a great deal of concern with regards to the large number of remands issued by the CAVC. n144

Although the practice of remanding cases is normal for appellate tribunals because they do not further develop the factual record, remands from the CAVC tend to attract more attention due to the already lengthy appeals process for veterans' claims. n145 Although the existence of the CAVC for the past twenty years has, arguably, significantly improved the veterans' benefits claims adjudication process by providing for meaningful judicial review, in a system already overwhelmed with delays, many veterans perceive the CAVC as further exacerbating this problem. n146

The primary method for the CAVC to reduce its remand rate is to more thoroughly scrutinize the Board's factual determinations. n147 From the time of its inception, the CAVC has simply affirmed many Board decisions. n148 In those instances when the CAVC disagrees with the Board's decision, the CAVC's typical order is a remand for further action consistent with the Court's written [*19] opinion, rather than a reversal. n149 In fact, the CAVC has been criticized as not having the will to compel the VA to deliver timely and accurate decisions to those who present claims before it. n150 For example, in the case of *Washington v. Nicholson*, n151 the CAVC remanded the case when it could have held that the Board's findings were clearly erroneous. n152 Similarly, in *Gutierrez v. Principi*, n153 the CAVC remanded the case for consideration of a Gulf War Syndrome diagnosis in a situation where the petitioner clearly appeared to have met the statutory requirements. n154 Moreover, the CAVC itself has admitted that "[i]n the context of adjudication in this [c]ourt, outright reversal on the merits has been very rare." n155 Nonetheless, the judges on the court remain convinced that remands are the best solution because they allow the VA to fix errors and decide cases. n156 However, this approach permits too many cases to linger in the system for too long without a final decision on the merits. n157

As a result of the high number of remands, the CAVC's caseload is steadily increasing, and there is no end in sight. n158 To ameliorate this problem, Congress must intervene. As of April 2008, pending legislation purports to establish a yearly review of the CAVC's workload, and provide the CAVC with the discretion to affirm, modify, reverse, or vacate, and remand Board decisions. n159 However, legislation must go further than this. Pursuant to the Veterans Benefit Act of 2002, Congress authorized the CAVC to reverse, as opposed to merely set aside, the VA's factual findings. n160 In

spite of this legislation, the CAVC concluded in *Roberson v. Principi* n161 that the statute did not affect any change in the scope of review of Board decisions. n162 Thus, [*20] in order for Congress to enforce more affirmative decision making by the CAVC, additional steps must be taken. Congress should therefore modify 38 U.S.C. § 7261 (a) (4) to include a more expansive standard of review than the current "plausible basis" standard. n163

Similarly, Congress should prescribe deadlines and action-forcing mechanisms for the CAVC. In this regard, in *Dambach v. Gober*, n164 the Federal Circuit held that "it would be appropriate for the Veterans Court to set a deadline by which this veteran's case will be concluded." n165 In that case, the Court stated that although the CAVC may be hesitant to meddle in the affairs of the Board, where the plaintiff is in poor health and the Board's review is insufficient, such hesitancy is inappropriate. n166 Thus, Congress should instruct the CAVC to issue deadlines similar to the one issued by the Federal Circuit in *Dambach* to enforce compliance with remand directives. Although the Board and RO's are currently required to provide "expeditious treatment" for remanded claims, such a directive has thus far proven ineffective. n167 Accordingly, Congress must provide the CAVC more specific guidelines in issuing deadlines for expeditious treatment of remanded claims.

Furthermore, the CAVC does not have enough physical space to hear its cases. n168 Although the CAVC started recalling retired judges in 2007 to assist with the growing backlog of cases, without more staff and building space to accommodate these judges, their presence cannot be utilized effectively. n169 Accordingly, Congress must appropriate more money to the CAVC to allow for more building space and support staff. Without additional funding, the CAVC will remain unable to make any meaningful progress with regard to its extensive backlog of cases.

Modifying the CAVC to require more aggressive decision-making and the utilization of specific deadlines in remanding cases will improve the current system by ceasing the practice of veterans' claims being needlessly recycled [*21] throughout the system. Concrete deadlines will ensure final decisions, and thus will also contribute toward alleviating the CAVC's significant backlog of cases. Likewise, appropriating more funds to the CAVC will improve the current system by allowing the CAVC the additional building space it needs to accommodate more judges and support staff. It logically follows that having more judges and staff available will allow more claims to be processed. Thus, additional funding will also contribute to alleviating the backlog of cases at the CAVC.

D. Educating Veterans About the VA Upon Entering Service

With regard to reforming the veterans' benefits system, there has been much emphasis on the "transition from service member to veteran." n170 The President's Commission on Care for America's Returning Wounded Warriors has suggested a comprehensive, patient-centered recovery plan to streamline the transition process. n171 Similarly, the Veterans' Disability Benefits Commission has highlighted the importance of a smooth transition from active duty service to civilian life. n172 However, in order to best implement long-term improvements to the current system, focus on this aspect should begin when service members first enter the military.

In addition to difficulties with transitioning due to the incompatibility of the VA and DOD systems, many veterans' claims are delayed due to time consumed attempting to locate service medical records, personnel records, and other service-related documents pertaining to an injury or event during service. n173 Upon entering service, the VA should advise service members of the importance of maintaining military records for personal purposes. Because much of the dissatisfaction with the current system, on the part of veterans, comes from the fact that disability benefits and services are not currently provided in a timely manner, n174 veterans should be informed from the time they enter service of the importance of documenting injuries, seeking treatment in service as well as after service, and maintaining service records. Likewise, if the VA provides veterans with an overall understanding of the system before they become a part of it, this will also facilitate transition into the system. In this regard, Congress should advise an orientation program for service members [*22] upon entering service, outlining how the VA benefits adjudication process works, and the importance of the above-referenced procedures in enabling this system to run more efficiently. In addition, Congress should mandate that service members receive yearly physical examinations, not just examinations upon entrance and separation from service, in order to encourage veterans to document any injuries or events that occurred during service.

Educating service members about the VA benefits adjudication process before their first exposure to this system will greatly benefit the current system. By understanding how the process works, service members will be better prepared to file a well-developed claim, thus decreasing the amount of time required by the RO in obtaining the information or evidence necessary to substantiate the veteran's claim. n175 Furthermore, the yearly physical requirement will result in fewer appeals to the Board and the CAVC, because required medical evidence will already be associated with the veteran's claims file. n176 Therefore, presuming cooperation on the part of veterans with the records keeping directive, fewer cases will require remands for further development as to whether a particular injury or event occurred during service, or whether the veteran experienced continuity of symptoms or treatment after service. n177

Conclusion

In 1956, the President's Commission on Veteran's Pensions, chaired by General of the Army (Ret.) Omar N. Bradley, concluded that there was "no clear national philosophy of veterans' benefits." n178 Accordingly, the Commission asserted a philosophy "to do justice by those who were injured or disabled as a consequence of their military service. n179 However, as evidenced by the state of the current benefits adjudication process, the VA and Congress appear to have drifted away from this objective with regards to the issuance of veterans' benefits today.

As the foregoing discussion suggests, many of the problems associated with the VA's benefits adjudication process can be traced to two distinct but interrelated causes: (1) significant delays experienced during the benefits adjudication process; and (2) the sizeable backlog of claims that has resulted [*23] from these delays. n180 Thus, the VA and Congress should modify the current system, with the specific objectives of decreasing claims processing time and reducing the backlog of cases in mind.

Despite the various proposals to completely redesign the current system, a comprehensive overhaul of the system is unnecessary and is not the most efficient use of the VA's limited resources. Because the VA has to consider budget implications, n181 the most effective way to improve the current system is to allocate those resources to the portions of the current system that are in the most need of repair. As previously discussed, these areas include processing at the RO level, modernization of the current Ratings Schedule and information technology systems, more affirmative decision making by the CAVC, and education for service members upon entering service.

The above-referenced modifications would result in considerable improvements to the current system. First, any steps taken to decrease claims processing time would result in an overall increase of veteran satisfaction with the system. Because the VA's purpose is "to do justice by those who were injured or disabled as a consequence of their military service," n182 veteran satisfaction should be a top priority in any modifications that are undertaken. Second, modernization of the Ratings Schedule and information technology systems would greatly enhance the current system by proactively preparing for the return of many veterans from Iraq and Afghanistan, as well as streamlining the current process for all veterans. n183 By being better prepared to adjudicate the new types of disability claims presented by these veterans, the VA will be able to alleviate rather than aggravate its current backlog of claims. Third, decreasing the CAVC's remand rate will result in more final decisions, and thus fewer cases lingering in the system for unreasonable periods of time. In this regard, the CAVC will be better able to focus its attention on newly presented claims and how to adjudicate those claims in a timelier manner. Last, educating service members about the VA prior to their need to utilize the disability benefits system will result in veterans that are better prepared to file their disability claims, and work with the system rather than against it. Not only will this increase veterans' satisfaction rates, but it will also result in decreased processing time at the RO level.

In sum, the current VA benefits adjudication system should not be maintained, but it should not be completely redesigned either. Although Congress' "'Scotch tape and bailing wire'" n184 approach to improving the veterans' benefits [*24] system has been criticized in the past, it is the only practical method of addressing the system's current needs. Maintaining the current system would result in continued dissatisfaction and unreasonable delays; however, completely redesigning the system would most likely produce a similar result. Therefore, the best way to improve the

current system is to modify the current benefits adjudication process, with the specific objectives of improving claims processing time and decreasing the VA's backlog of cases. This approach is certainly the best way to do justice by those who have served our country.

Legal Topics:

For related research and practice materials, see the following legal topics:

Military & Veterans LawVeteransBenefitsGeneral OverviewMilitary & Veterans LawVeteransU.S. Court of Appeals for Veterans ClaimsMilitary & Veterans LawVeteransVeterans Affairs

FOOTNOTES:

n1 Mike Hall, *His War is Over, but not Battle*, THE TOPEKA CAPITAL-JOURNAL, Apr. 11, 2008, available at http://cjonline.com/stories/041108/loc_267324204.shtml.

n2 *Id.*

n3 *Id.*

n4 *See id.*

n5 *See* Press Release, H. Comm. on Veterans' Affairs, House Veterans' Affairs Subcommittee Reviews Historic Legislation to Reform the VA Benefits Claims Processing System (Apr. 10, 2008), available at <http://veterans.house.gov/news/PRArticle.aspx?NewsID=231>.

n6 COMMITTEE ON MEDICAL EVALUATION OF VETERANS FOR DISABILITY COMPENSATION, BOARD ON MILITARY AND VETERANS HEALTH, A 21ST CENTURY SYSTEM FOR EVALUATING VETERANS FOR DISABILITY BENEFITS 37 (Michael McGearry et al. eds., 2007) [hereinafter A 21ST CENTURY SYSTEM], available at http://books.nap.edu/openbook.php?record_id=11885&page=37.

n7 *See id.*

n8 *Id.* ("The ratio of wounded to killed in the current wars in Iraq and Afghanistan is 9.1 to 1, compared with 3.2 to 1 in Vietnam and 2.3 to 1 in World War II.").

n9 *See, e.g.*, Press Release, H. Comm. on Veterans' Affairs (Apr. 10, 2008), *supra* note 5.

n10 *See, e.g.*, THE PRESIDENT'S COMMISSION ON CARE FOR AMERICA'S RETURNING WOUNDED WARRIORS, SERVE, SUPPORT, SIMPLIFY (July 2007) [hereinafter SERVE, SUPPORT, SIMPLIFY], *available at* <http://veterans.house.gov/Media/Image/110/9-19-07/DoleShalalaCommissionReport.pdf>.

n11 *See id.*

n12 *See* VETERANS' DISABILITY BENEFITS COMMISSION, HONORING THE CALL To DUTY: VETERANS' DISABILITY BENEFITS IN THE 21ST CENTURY (Oct. 2007) [hereinafter HONORING THE CALL To DUTY] 1-3, *available at* <http://www.vetscommission.org/pdf/FinalReport10-11-07-compressed.pdf>.

n13 *See* William F. Fox, Jr., *Deconstructing and Reconstructing the Veterans Benefits System*, 13 *KAN. J.L. & PUB. POL'Y* 339, 339 (2004).

n14 *Id.*

n15 *Id. at* 343.

n16 *Id.*

n17 *See* DEPARTMENT OF VETERANS AFFAIRS, VA HISTORY IN BRIEF 3 [hereinafter VA HISTORY IN BRIEF], *available at* <http://www1.va.gov/opa/feature/history/docs/histbrf.pdf>.

n18 *Id.*

n19 *Id.*

n20 *Id.*

n21 Christopher D. Knopf, Note, *One Last Battle: Reform of the Veterans' Administration Claims Procedure*, 74

VA. L. REV. 937, 938 (1988).

n22 *Id.*

n23 VA HISTORY IN BRIEF, *supra* note 17, at 4.

n24 DEPARTMENT OF VETERANS' AFFAIRS, THE ORIGIN OF THE VA MOTTO, <http://www1.va.gov/opa/feature/celebrate/vamotto.asp>.

n25 *Id.*

n26 Knopf, *supra* note 21, at 938.

n27 VA HISTORY IN BRIEF, *supra* note 17, at 8.

n28 Exec. Order No. 5398 (July 21, 1930), available at <http://www.presidency.ucsb.edu/ws/?pid=75311>, see also DEPARTMENT OF VETERANS' AFFAIRS, *FACT SHEET* at 7, (December 2007) [hereinafter *FACT SHEET*], available at <http://www1.va.gov/opa/fact/docs/vafacts.pdf>.

n29 Exec. Order No. 6230 (July 28, 1933), available at <http://www.conservativeusa.org/eo/1933/eo6230.htm>, see also *FACT SHEET*, *supra* note 28.

n30 VA HISTORY IN BRIEF, *supra* note 17, at 26.

n31 *Id.*

n32 OF VETERANS' APPEALS, How Do I APPEAL? 3 (2002), available at <http://www.va.gov/vbs/bva/010202A.pdf>; BOARD OF VETERANS' APPEALS, UNDERSTANDING THE APPEAL PROCESS, available at <http://www.va.gov/vbs/bva/glossary.htm>.

n33 *Walters v. Nat'l Ass'n of Radiation Survivors*, 473 U.S. 305, 309 (1985).

n34 *Id.*

n35 38 C.F.R. § 3.103(a) (2007). However, the right to representation is limited. *See* 38 U.S.C. § 5904 (2000 & Supp. V 2005).

n36 38 C.F.R. §§ 3.103, 3.159. *See also* 38 U.S.C. §§ 5103, 5103A.

n37 38 U.S.C. § 5107(b); 38 C.F.R. § 3.102.

n38 38 U.S.C. § 5104; 38 C.F.R. § 3.103(6).

n39 38 U.S.C. § 7105; 38 C.F.R. § 19.26.

n40 38 C.F.R. § 20.201; *see* 38 U.S.C. § 7105(b).

n41 38 U.S.C. § 7105(d)(1).

n42 38 U.S.C. § 7105(d)(1); 38 C.F.R. § 19.29.

n43 38 U.S.C. § 7105(a).

n44 38 U.S.C. § 7105(d)(3); 38 C.F.R. § 19.30. The substantive appeal is filed as a VA Form 9. *See* 38 C.F.R. § 20.202.

n45 *See* 38 U.S.C. § 7105(d)(5).

n46 38 U.S.C. § 7107; 38 C.F.R. § 20.900(a)-(b).

n47 *See* 38 C.F.R. § 20.1405(d)-(e).

n48 38 U.S.C. § 7104(a).

n49 *See* WILLIAM F. FOX, JR., *THE LAW OF VETERANS BENEFITS: JUDICIAL INTERPRETATION* 5-17 (Paralyzed Veterans of America 2002).

n50 Veterans' Judicial Review Act, Pub. L. No. 100-687, § 301, *102 Stat. 4105, 4113 (1988)* (codified as amended in scattered sections of 38 U.S.C.).

n51 Veterans' Programs Enhancement Act of 1998, Pub. L. No. 105-368, § 511, *112 Stat. 3315, 3341 (1998)* (codified at 38 U.S.C.A. § 7251); *see also* U.S. COURT OF APPEALS FOR VETERANS CLAIMS, HISTORY, <http://www.vetapp.gov/about/History.cfm> (last visited Sept. 7, 2008).

n52 *See, e.g.*, Veterans' Judicial Review Act § 301, *102 Stat. 4118* (allowing the court to submit budget requests directly to the President without agency review).

n53 38 U.S.C. § 7253; *see also* FOX, *supra* note 49 at 18-19 (discussing the composition and structure of the Veterans Court).

n54 38 U.S.C. § 7252(a).

n55 *See id.*

n56 *Id.* ("The Secretary may not seek review of any such decision [of the Board].").

n57 38 U.S.C. § 7252(b).

n58 38 U.S.C. § 7261(a) (4).

n59 38 U.S.C. § 7292(c).

n60 *Id.*

n61 *Id.*; see also *Boggs v. Peake*, 520 F.3d 1330, 1333-34 (2008).

n62 38 U.S.C. § 7292(d)(2); see also *Boggs*, 520 F.3d at 1333-34.

n63 FACT SHEET, *supra* note 28, at 1.

n64 *Id.*

n65 Hope Yen, *Judge warns of disability appeal backlog*, USA TODAY, May 22, 2007, available at http://www.usatoday.com/news/washington/2007-05-22-328987556_s.htm.

n66 Press Release, H. Comm. on Veterans' Affairs, (Apr. 10, 2008), *supra* note 5.

n67 *Id.*

n68 Yen, *supra* note 65.

n69 *See id.*

n70 *Id.*

n71 *Id.*

n72 *Id.*

n73 *Id.*

n74 *Id.*

n75 *Id.*

n76 *Id.*; *see also* SERVE, SUPPORT, SIMPLIFY, *supra* note 10, at 8-9.

n77 *See Veterans' Disability Benefits Claims Modernization Act of 2008: Hearing on H.R. 5892 Before the Subcomm. on Disability Assistance and Mem'l Affairs of the H. Comm. on Veterans' Affairs*, 110th Cong. (2008) (statement of Steve Smithson, Deputy Director, Veterans Affairs and Rehabilitation Commission, American Legion).

n78 *See* Yen, *supra* note 65.

n79 Press Release, H. Comm. on Veterans' Affairs, (Apr. 10, 2008), *supra* note 5.

n80 *Id.*

n81 *Id.*

n82 *Id.*

n83 *See generally* *Battling the Backlog: Challenges Facing the VA Claims Adjudication and Appeal Process: Hearing Before the S. Comm. on Veterans' Affairs*, 109th Cong. 45 (2005) (statement of Rick Surrat, Deputy National Legislative Director, Disabled American Veterans); Lawrence B. Hagel & Michael P. Horan, *Five Years Under the Veterans' Judicial Reform Act: The VA is Brought Kicking and Screaming into the World of Meaningful Due Process*, 46 *ME. L. REV.* 43, 46-51 (1994); Knopf, *supra* note 21; James T. O'Reilly, *Burying Caesar: Replacement of the Veterans Appeals Process is Needed to Provide Fairness to Claimants*, 53 *ADMIN. L. REV.* 223 (2001); Bill Russo, *Ten Years After the Battle for Veterans Judicial Review: An Assessment*, *FED. LAW*, June 1999.

n84 Fox, *supra* note 13, at 339.

n85 *Id.*

n86 *Id.* at 339-40 (adding veterans' failure to organize and the declining percentage of veterans in the general population to the factors contributing to relatively low political interest).

n87 *Id.* at 341-42.

n88 *See* Knopf, *supra* note 21, at 967.

n89 Fox, *supra* note 13, at 342.

n90 *Id.*

n91 *See* SERVE, SUPPORT, SIMPLIFY, *supra* note 10, at 3 ("We don't recommend merely patching the system, as has been done in the past. Instead, the experiences of these young men and women have highlighted the need for *fundamental changes* in care management and the disability system.").

n92 *See* Press Release, H. Comm. on Veterans' Affairs, (Apr. 10, 2008), *supra* note 5.

n93 *Id.*

n94 Fox, *supra* note 13 at 347.

n95 *Id.*

n96 *See* VA Claims Adjudication and Appeals Process: Hearing Before the S. Comm. on Veterans' Affairs, 110th Cong. (2007) (statement of Daniel L. Cooper, Under Sec'y for Benefits, Dep't of Veterans Affairs), available at <http://www.va.gov/OCA/testimony/svac/07030720.asp>.

n97 HONORING THE CALL TO DUTY, *supra* note 12, at 4.

n98 *Id.*

n99 *See, e.g., id.* at 338 (Recommendation 9.5).

n100 Press Release, H. Comm. on Veterans' Affairs, VA's Claim's Processing System is in Need of 21st Century Reform (Feb. 14, 2008), *available at* <http://veterans.house.gov/news/PRArticle.aspx?NewsID=205>.

n101 *Id.*

n102 *VA Claims Adjudication and Appeals Process Hearing*, *supra* note 95 (Statement of Daniel L. Cooper).

n103 *See id.*

n104 *Id.* The "Challenge" training program consists of initial centralized training, and a national standardized training curriculum. *Id.*

n105 O'Reilly, *supra* note 82, at 249-50.

n106 *Id.* at 250.

n107 *See 21 U.S.C. § 355(i)* (2006) (describing FDA procedure of automatic approval of clinical testing unless a regulatory hold is placed).

n108 Yen, *supra* note 65.

n109 Board of Veterans' Appeals: Expedited Claims Adjudication Initiative--Pilot Program, *73 Fed. Reg. 20571* (proposed Apr. 16, 2008) (to be codified at 38 C.F.R. pts. 3 and 20).

n110 *Id.*

n111 SERVE, SUPPORT, SIMPLIFY, *supra* note 10, at 21.

n112 Press Release, H. Comm. on Veterans' Affairs, (Feb. 14, 2008), *supra* note 99; *see also* SERVE, SUPPORT, SIMPLIFY, *supra* note 10, at 21.

n113 *See* Press Release, H. Comm. on Veterans' Affairs, *supra* note 99.

n114 SERVE, SUPPORT, SIMPLIFY, *supra* note 10, at 10.

n115 *Id.*

n116 38 C.F.R. §§ 1110, 1131 (2007).

n117 A 21ST CENTURY SYSTEM, *supra* note 6, at 3.

n118 HONORING THE CALL To DUTY, *supra* note 12, at 6.

n119 *Id.*

n120 A 21ST CENTURY SYSTEM, *supra* note 6, at 1.

n121 SERVE, SUPPORT, SIMPLIFY, *supra* note 10, at 22.

n122 A 21ST CENTURY SYSTEM, *supra* note 6, at 110.

n123 *Id.*

n124 Randolph E. Schmid, *Medical Groups Push for Better Vets Care*, USA TODAY, June 7, 2007, available at http://www.usatoday.com/news/health/2007-06-07-3756287170_x.htm.

n125 A 21ST CENTURY SYSTEM, *supra* note 6, at 38.

n126 *Id.*

n127 *See* SERVE, SUPPORT, SIMPLIFY, *supra* note 10, at 13-14.

n128 HONORING THE CALL TO DUTY, *supra* note 12, at 6.

n129 *Id.*

n130 *See id.* It should also be noted that Congress has begun to address this topic, as the Veterans Disability Benefits Claims Modernization Act of 2008 passed the House July 30, 2008. The proposed bill provides for a plan for readjusting the Ratings Schedule, and will address evidence problems associated with PTSD. *See* Veterans Disability Benefits Claims Modernization Act of 2008, H.R. 5892, 110th Cong § 102.

n131 *See* HONORING THE CALL TO DUTY, *supra* note 12, at 6; *see* SERVE, SUPPORT, SIMPLIFY, *supra* note 10 at 22.

n132 Press Release, H. Comm. on Veterans' Affairs, (Feb. 14, 2008), *supra* note 99.

n133 *Id.*

n134 *Id.*

n135 SERVE, SUPPORT, SIMPLIFY, *supra* note 10, at 21.

n136 See A 21ST CENTURY SYSTEM, *supra* note 6, at 105.

n137 See *id.* at 114.

n138 See Press Release, H. Comm. on Veterans' Affairs, (Apr. 10, 2008), *supra* note 5 (noting that the claims process at the VA is "archaic," "prone to errors," and is "fraught with ... inadequate accountability"). Thus, it logically follows that were the system updated and no longer archaic, it would be less prone to error and therefore would result in more accurate decisions.

n139 See Press Release, H. Comm. on Veterans' Affairs, (Apr. 10, 2008), *supra* note 5.

n140 See SERVE, SUPPORT, SIMPLIFY, *supra* note 10, at 25-26.

n141 See *id.*

n142 U.S. COURT OF APPEALS FOR APPEALS FOR VETERANS CLAIMS, WELCOME, <http://www.vetapp.uscourts.gov/> (last visited Sept. 8 2008).

n143 38 U.S.C. § 7261(a) (2000 & Supp. V 2005).

n144 Richard E. Levy, *Of Two Minds: Charitable and Social Insurance Models in the Veterans Benefits System*, 13 KAN. J.L. & PUB. POL'Y 303, 321 & 336 n.177 (2004) (noting that VA takes nearly four times as long to process remanded cases as original claims).

n145 *Id.* at 321 & 336 nn.176-77.

n146 See FOX, *supra* note 49, at 118; Michael P. Allen, *Significant Developments in Veterans Law (2004 - 2006) and What They Reveal About the U.S. Court of Appeals for Veterans Claims and the U.S. Court of Appeals for the Federal Circuit*, 40 U. MICH. J. L. REFORM 483, 528 (2007).

n147 Allen, *supra* note 145, at 528-29.

n148 FOX, *supra* note 49, at 46.

n149 *Id.* at 57-58.

n150 O'Reilly, *supra* note 82, at 228.

n151 *19 Vet. App. 362 (2005)*.

n152 *Id.* at 372-73 (Kasold, J. concurring in part and dissenting in part) (arguing that the majority erred in remanding the case when it could have held that the Board's finding concerning medical nexus evidence was clearly erroneous).

n153 *19 Vet. App. 1 (2004)*.

n154 *Id.* at 7-11.

n155 *Swiney v. Gober, 14 Vet. App. 65, 70 (2000)*.

n156 *See, e.g., Gutierrez, 19 Vet. App. at 10-11*.

n157 Fox, *supra* note 13, at 347.

n158 Yen, *supra* note 65.

n159 Press Release, H. Comm. on Veterans' Affairs, (Apr. 10, 2008), *supra* note 7.

n160 Veterans Benefit Act of 2002, Pub. L. No. 107-330, § 401, *116 Stat. 2829, 2832 (2002)*; *38 U.S.C. § 7261*

(a)(4) (2000 Supp. V 2005). The legislative history of this act makes clear that Congress intended to provide for a more searching appellate review of BVA decisions.

n161 *17 Vet. App. 135 (2003)*.

n162 *Id. at 147-48*.

n163 Under the CAVC's interpretation of the "clearly erroneous" standard, it will not reverse the Board if there is a "plausible basis" for the Board's findings of fact. *See Levy, supra* note 143, at 321. This standard appears even more deferential than the ordinary interpretation of the clearly erroneous standard, which is when the reviewing court has a "definite and firm conviction" that an error has been committed. *Id.*

n164 *223 F.3d 1376 (Fed. Cir. 2000)*.

n165 *Id. at 1381*.

n166 *See id.*

n167 *See, e.g., Allday v. Brown, 7 Vet. App. 517, 533-34 (1995); Mason v. Brown, 8 Vet. App. 109, 112 (1995); see also Battling the Backlog: Challenges Facing the VA Claims Adjudication and Appeal Process: Hearing Before the S. Comm. on Veterans' Affairs, 109th Cong. 60 (2005)*.

n168 Yen, *supra* note 65.

n169 *Id.*

n170 Press Release, H. Committee on Veterans' Affairs, (Apr. 10, 2008), *supra* note 5.

n171 SERVE, SUPPORT, SIMPLIFY, *supra* note 10, at 13.

n172 HONORING THE CALL OF DUTY, *supra* note 12, at 10.

n173 See, e.g., *Allday v. Brown*, 7 Vet. App. 517, 520-25 (1995) (noting the many medical examinations that veteran provided as part of the record, the need to obtain those documents from a variety of sources, and the period of more than thirty years over which the claim was pending).

n174 Press Release, H. Comm. on Veterans' Affairs (Apr. 10, 2008), *supra* note 5.

n175 See 38 C.F.R. § 3.159(b)-(c) (2007) (describing the veteran's duty to provide information and informing veterans that the VA will not pay benefits to a veteran whose application is incomplete).

n176 SERVE, SUPPORT, SIMPLIFY, *supra* note 10, at 24-25.

n177 See, e.g., *Booth v. Brown*, 8 Vet. App. 109, 110-11 (1995) (describing a lost medical form that required the CAVC to remand the case to the Board because of an incorrect request by the RO).

n178 SERVE, SUPPORT, SIMPLIFY, *Supra* note 10, at 12.

n179 *Id.*

n180 Press Release, H. Comm. on Veterans' Affairs (Apr. 10, 2008), *supra* note 5.

n181 Fox, *supra* note 13, at 347.

n182 SERVE, SUPPORT, SIMPLIFY, *supra* note 10, at 12.

n183 *Id.* at 22, 25.

n184 Fox, *supra* note 13, at 347.