**AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO**

**AND**

**THE AFGE NATIONAL VETERANS’ AFFAIRS COUNCIL**

**STATEMENT FOR THE RECORD**

**WHY ARE VETERANS WAITING YEARS ON APPEAL?: A REVIEW OF THE POST-DECISION PROCESS FOR APPEALED VETERANS’ DISABILITY BENEFITS CLAIMS**

**COMMITTEE ON VETERANS’ AFFAIRS**

**SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS**

**UNITED STATES HOUSE OF REPRESENTATIVES**

**June 18, 2013**

**Overview**

The American Federation of Government Employees and the AFGE National Veterans’ Affairs Council (hereinafter “AFGE”), the exclusive representative of employees processing appeals at Veterans Benefits Administration (VBA) Regional Offices (ROs) appreciates the opportunity to share our concerns and recommendations regarding the claims appeals process.

**Summary of Recommendations**

*Decision Review Officers (DROs), employees at the RO level responsible for appeals, should work consistently on appeals issues, rather than being assigned to work on claims developing and rating*. AFGE’s response from employees consistently stated that DROs are regularly taken off of working on appeals cases and moved to work on developing and rating cases. This issue arises on a yearly basis, when DROs are diverted from appeals for several months at the end of the year.

*VBA should adopt a new work credit system since DROs do not receive proper credit for a significant number of tasks they complete on a daily basis*. DROs receive no credit for deferred ratings and other necessary tasks they are required to complete on a daily basis. Consequently, DROs are denied a fair opportunity to meet their performance standards and feel pressured to rush through tasks for which they receive no credit, rather than focusing on the task at hand.

*VBA should place a higher emphasis on quality in developing and rating claims.* A significant number of errors result from the lack of quality at the Veterans Service Representative (VSR) and Rating VSR (RVSR), leading to more appeals. VBA must focus on quality as well in order to limit the number of appeals through performance standards and incentives for employees.

*DROs need additional training on the appeals process especially when new laws and regulations are enacted.* Most DROs reported almost no appeals specific training for appeals.

*AFGE urges the Subcommittee to address a worsening morale problem among DROs that is impacting recruitment and retention.* DROs are often the face of VBA appeals for the veteran, and expressed frustrations with representing the agency when they reach out to veterans who have been waiting over three years for their appeals case to be processed. The DROs believe that a renewed emphasis from VBA on appeals would help morale and productivity at their ROs.

*AFGE received two suggestions from several ROs that we believe the Subcommittee should consider as time saving measures: (1) elimination of the requirement that the veteran elect either a DRO review or a traditional appeal; and (2) shortening the time to submit a Notice of Disagreement (NOD).* Employees reported that the appeals are delayed significantly by waiting for the veteran to declare which type of appeal they prefer. Also, veterans regularly wait the a full year to file NODs; if these were required to be filed within a shorter timeframe, the appeals process would move much more smoothly. AFGE believes the Subcommittee should examine these recommendations in depth before implementing any changes.

AFGE surveyed its members processing appeals to address workforce issues. We received responses from the following ROs that are discussed below:

* Portland, OR
* Chicago, IL
* Milwaukee, WI
* Winston Salem, NC
* Denver, CO
* Little Rock, AR
* St. Petersburg, FL
* Montgomery, AL

VBA employees responding to the Subcommittee’s request consistently expressed their dedication and sense of purpose in serving the veterans. Over half (52%) of VBA employees are veterans themselves, and many of these employees receive benefits from the VA. Therefore, many have direct personal experiences with the claims process. Despite the many challenges they face, VBA employees uniformly remain steadfast in their goal to serve veterans, work hand in hand with Veteran Service Organizations, and do all that they can to work with VA to lower the unacceptably high backlog of appeals cases.

*DROs not working on appeals cases*

Nationwide, DROs consistently reported that they are regularly diverted from appeals work to perform other work. Although there appears to be no standardized process for determining when DROs should be diverted to other tasks, employees reported that it has been a regular practice during the last quarter of each year to assign DROs to developing and rating cases. In one RO, a DRO mentioned that some appeals personnel have not worked on appeals in three years, and instead work ratings for the Veterans Service Center.

The inconsistency adds to the backlog of appeals claims. Most ROs reported that they do not have enough personnel to catch up on all of the appeals once their appeals team stops processing appeals.

Several recent VBA policy decisions also contributed to DROs not working on appeals cases. VBA instituted mandatory overtime at every RO through September 2013. Right now, DROs are only allowed to work on developing and rating cases during mandatory overtime. VBA should allow DROs to work on appeals during mandatory overtime as well. Also, following Undersecretary Hickey’s recent Fast Letter for processing two year old claims, DROs were consistently moved off of appeals work and pushed into processing the two year old claims.

*Broken Work Credit System*

DROs do not receive proper work credit for a significant amount of tasks they complete on a daily basis.

For example, deferred ratings occur on a daily basis for DROs. Often times, DROs must send the claim back to the VSR for additional development (e.g. more medical evidence); DROs do not receive no credit for this work (because no appeal action is taken). DROs also have to make complex exam requests with various medical opinions, which can up to several hours depending on the complexity of the issue. It is important to spend time on these issues since the veteran should be assisted and informed accurately about additional medical evidence they will need for their claim. However, a DRO could spend an entire day working on these cases and receive no production credit for the day. DROs also receive no credit for supplemental development.

DROs also do not receive adequate credit for multi-issue and complex cases. Veterans are regularly filing claims with dozens of issues and the appeals have a similar level of complexity. Employees also are denied sufficient credit for processing cases involving complex claims such as military sexual trauma and TBI.

Employees reported a significant amount of productive time lost due to breakdowns in VBMS. VBMS is in the process of being rolled out nationally. However, the system still has frequent and significant malfunctions, at both the RO and national levels. During VBMS shutdowns or malfunctions, employees receive no adjustment to their work credit requirements for lost production time.

*Greater Emphasis on Quality*

VBA continues to claim they are placing greater emphasis on quality for work performed by VSRs, RVSRs, and DROs, by pointing to the improved quality numbers. However, by counting issues instead of entire cases when determining, the numbers have improved through this measure alone. While this format for calculating quality is more fair and accurate, it is misleading to say that this demonstrates an improvement in quality.

VBA employees in ROs nationwide reported the continued emphasis on production above all else. This emphasis leads to more mistakes by employees rushing through claims and results in more appeals. The DROs surveyed all reported that many appeals result from errors at the development and rating level and the entire process could be avoided for some veterans with an improvement in quality.

*Additional Training on Appeals Process*

DROs in each RO described the training for appeals as essentially non-existent. Milwaukee stated that there is no DRO specific training. DROs must consistently keep up with new policies and regulations, but they are not provided adequate time during the day to learn about and absorb this new information. A DRO from Chicago went through appeals training in 2011 in a central location and said the quality was high, but there is no equivalent at the local level.

Most DROs reported that they receive the majority of their training in the same classes as RVSRs, which is redundant and irrelevant to appeals work.

*Low Morale*

Every RO surveyed reported that morale at their office is particularly low at this point in time. Many times, DROs are the face of the VBA appeals process since they must regularly contact veterans about the status of their appeal. The DROs reported dealing with understandably frustrated veterans who have been waiting years for their appeals decision. VBA employees, 52% of which are veterans, are incredibly dedicated to serving veterans and providing quality and timely work. However, since VBA consistently places less emphasis on the appeals process, appeals at ROs continue to pile up, leaving veterans waiting years for decisions.

The problems with the work credit system also contribute to low morale amongst DROs. DROs are pushed hard on the production side while the emphasis is lost on quality. A DRO from Milwaukee observed that it appears that management is no longer interested in producing quality work, which further lowers the morale of this dedicated workforce.

*Potential Time Saving Changes in the Appeals Process*

A DRO in Chicago suggested that time could be saved by removing the requirement for the veteran to elect whether or not they want a DRO review or a traditional review. They believed that this process adds at least six months to the appeal process due to the required additional correspondence with the veteran, followed by the case being pushed to the back of the queue (which could be further delayed by additional documentation that comes in during the delay). The Chicago DRO also suggested that if all cases received a DRO review upfront, a lot of the appeals issues could be resolved on the spot without the need for the case to continue through the entire appeals process.

Chicago, Milwaukee, and Winston Salem ROs all reported that the appeal period should be lowered from one year to somewhere between 60-90 days. These offices believed that since veterans already have other opportunities to file appeals after their rating, this will speed up the process overall if they file within 60-90 days.

Thank you for the opportunity to share the views of AFGE and its National VA Council.