



## 1 Increase Transparency & Reform for VA Claims

Department of Veterans Affairs (VA) disability benefits provide monthly compensation to veterans with service-connected conditions. They are also the gateway to VA health care eligibility for most veterans. Although the 2017 Appeals Modernization Act has significantly reduced VA's appeals backlog, veterans face serious obstacles to establishing successful claims. First, VA has repealed its longstanding policy of permitting accredited service officers to review claims decisions prior to formal promulgation. Additionally, many veterans with health conditions for which there exists a presumption of service connection are unaware of their entitlement to VA health care and benefits.

### Reintroduce Pre-decisional Review (48-Hour Review)

In April 2020, VA repealed its decades-long pre-decisional review policy, colloquially known as "48-hour review." This policy was outlined in VA's M21-1 Adjudication Pro-

cedures Manual<sup>1</sup> and was an essential feature of the VA claims process. During the review process, accredited service officers had the opportunity to inspect VA decisions in the 48-hours preceding formal promulgation to ensure that all claimed conditions had been addressed and properly adjudicated. This process served as an independent quality control check prior to VA's internal review procedure, known as Systematic Technical Accuracy Review.

After reviewing a rating decision, service officers were permitted to notify VA of any irregularities, missed conditions, typographical errors, or other mistakes before a disability rating was formally promulgated. This process allowed for errors to be resolved without requiring veterans to seek redress in the time-consuming and often costly claims appeals process. In sum, the 48-hour review procedure ensured the timely delivery of veterans' benefits and reduced the workload of VA's appeals infrastructure.

VA formerly permitted this same quality review in a paper-based system, during which time service officers were granted the opportunity to physically review individual claims folders for accuracy at each VA regional office. Once the service officer was satisfied that a rating

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was correct, or discussed necessary changes with the rater, the service officer then endorsed the rating to signify concurrence before it was forwarded for promulgation. Both the necessity for and efficaciousness of this review process as a means of ensuring quality control had remained unchanged by the advent of digital claims filing.

A recent report from the VA Office of Inspector General, Report #20-02825-242,<sup>2</sup> demonstrates just one example of the necessity for reimplementing a 48-hour review. The report found that of the 3,200 claims established from April 7 through April 20, 2020, Veterans Benefits Administration (VBA) staff failed to apply date of receipt guidance in an estimated 98 percent of claims.<sup>3</sup> More

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specifically, the report notes that VBA staff “failed to use the postmark date of mail as the date of receipt, failed to use a date of receipt of February 29, 2020, when the postmark date was unavailable, and failed to document the reasons for estimates of date of receipt on mail with partially legible postmarks.”<sup>4</sup> These errors are significant

because they can cause a veteran to receive an improper effective date for a claim or a denial for untimeliness. However, a service officer could identify and recommend a correction for these types of errors through a 48-hour review.

### Establish Claim Dates for VA Treatment

Title 38 of the Code of Federal Regulations recognizes over 125 types of presumptive diseases based on several different types of exposures, places of service, and chronic diseases diagnosed within 12 months of service.

Veterans suffering from diseases such as cancer, diabetes, and other chronic conditions may not be aware that the diseases may be eligible for presumptive service connection. Many VA medical facilities are not currently staffed or equipped to provide appropriate counseling to veterans or their families on how to file a claim for service-connected benefits, specifically for presumptive diseases.

The Court of Appeals for Veterans Claims held in *Bell v. Derwinski*, 2 Vet. App. 611 (1992) that VA is deemed to have constructive knowledge of all VA records. Such records are considered evidence of record at the time a decision is made.

It follows that if VA is providing treatment for a diagnosed, recognized presumptive disease, they have constructive knowledge of the diagnosed disease and that it is a presumptive condition. Congress should enact legislation to establish a date of claim based on VA health care treatment and diagnosis for recognized presumptive diseases. ♦

### The IBVSOs Recommend:

- Congress enact legislation to permit service officers to review VA disability benefits ratings 48-hours prior to their formal promulgation.
- Congress enact legislation to establish a date of claim based on VA health care treatment and diagnosis for recognized presumptive diseases.