

April 26, 2016

Senator Johnny Isakson, Chairman
Senate Committee on Veterans' Affairs
412 Russell Senate Office Building
Washington, DC 20510

Senator Richard Blumenthal, Ranking Member
Senate Committee on Veterans' Affairs
825A Hart Senate Office Building
Washington, DC 20510

Dear Chairman Isakson and Ranking Member Blumenthal:

We are writing to express support for the draft appeals reform bill that has been circulated by the Department of Veterans Affairs (VA) and encourage you to work together with us and with VA in order to approve and enact this legislation as expeditiously as possible. While all of the final details have not yet been worked out, we believe that the time may soon be ripe to move the legislative process forward so that comprehensive appeals reform can be achieved this year.

As you are aware, we have been working closely with the Board of Veterans' Appeals ("Board"), the Veterans Benefit Administration (VBA) and other key stakeholders in order to develop a new appeals process to provide quicker, accurate decisions for veterans and family members who are seeking benefits based on their military service. Over the past few months we have worked collaboratively and intensively to develop a new framework to provide more options to resolve appeals quickly, while fully protecting veterans' rights and prerogatives in the claims and appeals process. We believe that the current draft legislation that has been circulated can serve as the basis to accomplish these goals.

The key to this new appeals process is providing veterans multiple options to get speedier decisions on their claims while preserving effective dates based on the facts found. Rather than requiring veterans to file a Notice of Disagreement (NOD) and enter into the formal appeals process as the only way to preserve their effective date following a denial, the new appeals structure would create new options. Veterans could protect their claim's effective date if within one year of their claim decision they seek a higher level de novo review of their claim based on the evidence of record, readjudication of their claim with a hearing, or file a supplemental claim with new evidence. As long as they continuously pursue their claim through one of these options, or through one of the new appeals options, within one year of each subsequent decision, they can maintain the opportunity for benefits to be awarded from the original effective date if the facts so warrant.

When a veteran determines it appropriate to file a NOD to take their appeal to the Board, the new system would provide two options: a de novo review of the existing evidentiary record, or a de novo review that allows the introduction of new evidence and a hearing before the Board. In both cases, the Board would only be able to remand cases back to the VBA if there was a "duty to assist" error made by VBA. Following a Board decision, a veteran could again file a supplemental claim pursuant to this decision and have their original effective date protected as long as they do so within one year of the Board decision. This change should reduce remands to only those instances when the Board determines that the VBA failed to provide the assistance required to claimants under the law.

By providing veterans with a number of options at both VBA and the Board, and allowing them to choose the most appropriate venue based on their individual circumstances, the new system may be able to make more efficient use of the resources provided to the Board. If properly resourced and administered, this new appeals system could increase the timeliness of accurate decisions, reduce the overall workload and fully protect veterans' rights in the claims and appeals process.

While we are optimistic that the draft legislation could improve the appeals process, we strongly caution that two critical issues must be fully addressed in order to make this new system successful.

First, both VBA and the Board must be provided adequate resources to meet current and future workload. Over the past decade, the volume and complexity of both claims and appeals has increased significantly, which created a backlog of claims that rose to almost a million before VBA modernized its claims process over the past few years. However, the reduction of that backlog was primarily accomplished through a significant increase in resources, including additional workforce, mandatory overtime and reassignment of appeals staff to claims work. In order to address the increasing workload of both claims and appeals in the future, both VBA and the Board will need to have sufficient staff and supporting infrastructure, particularly modern IT systems, to resolve the current backlog and avoid future backlogs.

Second, the Board and VBA must develop and implement a realistic plan to address the more than 440,000 appeals currently pending, most of which are still within VBA's jurisdiction. Until these pending appeals are properly resolved, no new appeals structure or system can be successful. While we have been in discussion with VBA and the Board about how best to address these legacy appeals, we have not seen any plan, or even an outline of a plan, to deal with its current backlog of appeals. We need Congress to perform aggressive oversight of this process to support a proper outcome.

Assuming that these two concerns can be fully and openly addressed, we believe that the new appeals structure embodied in the legislative language circulated by VA can serve as the foundation of a new and improved appeals process that could benefit veterans filing claims and appeals. While there will certainly be additional changes and improvements necessary as this legislation is considered and moved by the Committee, the full Senate and the House, we believe that the time is right to work towards approving comprehensive appeals reform legislation this year. By continuing to work together in good faith, we can achieve real progress for the men and women who served.

Respectfully,



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