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# THE WAITING GAME: MENDING THE DISABILITY BACKLOG

*by* MELISSA KONG

**R**obert Calden dedicated four years of his life to serve in the military, fighting in the Vietnam War from 1967 to 1971.<sup>1</sup> While abroad, Calden suffered a knee injury and upon returning to the United States in 1971, he received a 10 percent rate for disability benefits.<sup>2</sup> It wasn't until 2011 that Calden filed his second disability claim, indicating that his knee injury had worsened.<sup>3</sup> At that time, he also filed a new claim for his work with Agent Orange along the Mekong Delta.<sup>4</sup> After waiting more than a year and a half, the Department of Veterans Affairs (VA) finally approved him for 80 percent disability benefits.<sup>5</sup> Calden is one of thousands of veterans who wait countless months to receive benefits.<sup>6</sup>

## SYSTEMIC BACKLOG OF DISABILITY CLAIMS

The VA estimates that veterans, like Calden, who submit a secondary claim — a claim for a disability that developed or worsened by a service-connected condition — wait an average of 273 days to receive benefits.<sup>7</sup> Veterans that submit a new claim — a claim for a benefit that was not filed before — typically wait an even longer period that averages 327 days.<sup>8</sup> These figures indicate that there is a systemic backlog of disability claims for veterans, resulting in delayed access to medical benefits.<sup>9</sup>

As of October 1, 2013, approximately 418,000 disability claims were waiting to be processed, more than half of which had been pending more than 125 days.<sup>10</sup> The VA faces pressure from Congress, veteran advocates, and news media outlets to resolve the backlog crisis.<sup>11</sup> In 2012, two non-profit groups, Veterans for Common Sense and Veterans United for Truth, brought action against the VA, alleging that “unconscionable delays” in obtaining disability benefits violated statutory and constitutional rights.<sup>12</sup>

After much public outcry, the VA executed new tactics, intending to end the backlog by 2015.<sup>13</sup> These tactics included transitioning to an electronic processing system,<sup>14</sup> making efforts to expedite medical examinations,<sup>15</sup> and creating incentives for applicants to submit all necessary documents for a claim at once through a Fully Developed Claim (FDC).<sup>16</sup> The FDC, if submitted between August 6, 2013 and August 5, 2015, will be given high priority and veterans will be eligible for up to one year of retroactive benefits.<sup>17</sup>

## EFFECTS OF THE VA’S INITIATIVES

Since the VA enacted its new plan, the disability backlog has decreased by 34 percent from March to November 2013.<sup>18</sup> According to the Secretary of the VA, Eric Shinseki, although the VA has “completed nearly all claims that have been pending two years or longer . . . much work remains to be done to eliminate the backlog” by 2015.<sup>19</sup>

Critics question whether the new initiatives emphasize speed over accuracy.<sup>20</sup> Despite a decrease in the backlog, the number of claims going to appeal due to errors has increased.<sup>21</sup> For example, in 2011 the Board of Veterans’ Appeals

found that nearly 35,000 out of 50,000 appeals had errors.<sup>22</sup> The Board estimates that during the next four years, the amount of cases pending appeal will double due to an increase in veterans who believe the VA wrongfully denied them benefits.<sup>23</sup> This suggests that veterans may have to wait even longer for their claims to be reviewed, further delaying them access to medical benefits.<sup>24</sup>

Even Calden faces the possibility of an appeal in his future.<sup>25</sup> Calden recently sought to increase his benefits from 80 to 100 percent after his doctor found a blood clot in his injured knee while he waited for his second disability claim to be approved.<sup>26</sup> The blood clot eventually moved to his lungs and he had to have surgery, incurring more than \$160,000 in medical expenses.<sup>27</sup> “I thought maybe I could ask them to pay for it, but I just got a letter the other day saying that they wouldn’t approve of it, but I could appeal,” he said.<sup>28</sup> Veterans, like Calden, fight for their country, yet still find themselves fighting for coverage long after they return home.<sup>29</sup>

#### HOMELESS VETERANS

When soldiers return home from service, many lack financial means and don’t have a family or social support network to help them through difficult times.<sup>30</sup> When these factors are compounded by medical conditions such as post-traumatic stress disorder or a substance-abuse disorder, life becomes an even greater struggle.<sup>31</sup> For veterans who end up becoming homeless, the process of obtaining benefits on their own can be an even bigger challenge because it is difficult to regain stability.<sup>32</sup>

Veterans organizations often compare filing a disability claim to filing a complex tax return or defending one’s self in a lawsuit.<sup>33</sup> Generally, the process is difficult to navigate without assistance.<sup>34</sup> Stephen Leon, a veteran who served two tours in Afghanistan, struggled to receive disability benefits until he enlisted the help of an advocate in 2012.<sup>35</sup> Now he receives a 70 percent rate for his disabilities and is no longer at risk of becoming homeless.<sup>36</sup> Leon claims that without the help of the advocate or his disability benefits, he would probably be homeless.<sup>37</sup>

The U.S. Department of Housing and Urban Development estimates that more than 62,000 veterans are still on the streets, a number which the VA intends to decrease.<sup>38</sup> In order to help get veterans off of the streets, the VA has

stated that it intends to provide \$4.4 billion in health care to homeless veterans in 2013.<sup>39</sup> As a result, veterans who are homeless will hopefully be able to receive proper care for their war-related disabilities and regain stability.<sup>40</sup>

#### CONCLUSION

As the disability backlog declines, the number of claims on appeal rises.<sup>41</sup> While there is still a lot of work to be done, the VA continues to move toward its goal of providing more veterans with disability benefits by 2015.<sup>42</sup> Although critics question the effectiveness of the VA's strategy, it is not disputed that there is a national movement toward helping veterans obtain benefits, particularly those who are disenfranchised and homeless.<sup>43</sup> As Calden states, "All the people I served with . . . we just worked together."<sup>44</sup> Now our nation should work together to help the men and women who respectably fought for our country.

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#### NOTES

1 Interview with Robert Calden, Disabled Veteran, Millwright, (Oct. 14, 2013) [hereinafter Calden Interview](the name has been changed for privacy reasons).

2 *Id.*; See also, U.S. Dep't of Veterans Affairs, *Veterans Comp. Benefits Rates Tables*, available at [http://www.benefits.va.gov/COMPENSATION/resources\\_comp01.asp](http://www.benefits.va.gov/COMPENSATION/resources_comp01.asp) (indicating that a rate of 10 percent receives \$129 compensation).

3 Calden Interview, *supra* note 1.

4 *Id.*

5 *Id.*

6 See Michael Martinez, *Obama says Backlog Reduced in Veterans' Disability Claims*, CNN, Aug. 10, 2013, available at <http://www.cnn.com/2013/08/10/us/obama-veterans/index.html>.

7 See *id.* (indicating that the average wait after a veteran files a claim is 273 days); See also U.S. Dep't of Veterans Affairs, *Compensation*, [hereinafter *Compensation*], available at <http://www.benefits.va.gov/compensation/types-claims.asp> (last visited Nov. 15, 2013)(indicating that a secondary claim develops as a result of or is worsened by another service-connected condition).

8 See Martinez, *supra* note 6 (stating that veterans who submit a new claim wait an average of 327 days); see also *Compensation*, *supra* note 7 (indicating that a new claim is for a benefit that may or may not have been filed before and is generally based entirely on new evidence).

9 See Martinez, *supra* note 6.

10 Ned Resnikoff, *Shutdown means 'Lost Ground' for Disabled Veterans Benefits*, MSNBC, Oct. 18, 2013, available at <http://www.msnbc.com/msnbc/shutdown-means-lost-ground-disabled-vets>.

11 The Editorial Bd., *VA Backlog Fails Ailing Veterans: Our View*, USA TODAY, Aug. 21, 2013, available at <http://www.usatoday.com/story/opinion/2013/08/21/va-veterans-disability-claims-backlog-editorials-debates/2683167/>.

- 12 See *Veterans for Common Sense v. Shinseki*, 678 F.3d 1013, 1014-15 (9th Cir. 2012).
- 13 See Press Release, U.S. Dep't. of Veterans Affairs, VA Processes Nearly All Disability Claims Pending Over 2 Years, Moves to Complete Those Older Than 1 Year (June 20, 2013) [hereinafter Press Release, VA Processes Claims], available at <http://www.va.gov/opa/pressrel/pressrelease.cfm?id=2454>.
- 14 Press Release, U.S. Dep't. of Veterans Affairs, New Technology in Place for Electronic Submission of Veterans' Disability Claims (June 18, 2013), available at <http://www.va.gov/opa/pressrel/pressrelease.cfm?id=2453>.
- 15 Press Release, VA Processes Claims, *supra* note 13.
- 16 Press Release, U.S. Dep't of Veterans Affairs, VA Grants up to One Year Retroactive Benefits for Veterans Filing Fully Developed Claims to Help Reduce the Backlog (Aug. 1, 2013), available at <http://www.va.gov/opa/pressrel/pressrelease.cfm?id=2464>.
- 17 *Id.*
- 18 See Press Release, U.S. Dep't of Defense, VA Cuts Disability Claims Backlog by 34 Percent Since March, (Nov. 8, 2013), available at <http://www.defense.gov/news/newsarticle.aspx?id=121079> (indicating that the backlog has dropped from 611,000 to 400,835 since peaking in March 2013).
- 19 Press Release, VA Processes Claims, *supra* note 13.
- 20 Aaron Glantz, *Accuracy Isn't Priority as VA Battles Disability Claims Backlog*, U.S. H.R. CONGRESSWOMAN JACKIE SPEIER, available at [http://speier.house.gov/index.php?option=com\\_content&view=article&id=843:accuracy-isnt-priority-as-va-battles-disability-claims-backlog&catid=2:jackie-in-the-news&Itemid=15](http://speier.house.gov/index.php?option=com_content&view=article&id=843:accuracy-isnt-priority-as-va-battles-disability-claims-backlog&catid=2:jackie-in-the-news&Itemid=15) (last visited Nov. 15, 2013).
- 21 *Id.*
- 22 *Id.*
- 23 See Jared Serbu, *As VA Works to Eliminate One Backlog, One More Might Emerge*, FEDERAL NEWS RADIO (June 19, 2013, 10:06am), available at <http://www.federalnewsradio.com/108/3363126/As-VA-works-to-eliminate-one-backlog-one-more-might-emerge> (indicating that the VA's Board of Veterans Appeals expects to handle 54,000 appeals by the end of 2013 and perhaps up to 100,000 four years from 2013).
- 24 *Id.* (indicating that in 2012 it took an average of 1,040 days between the time a veteran submitted an appeal at a regional office and the board's final decision).
- 25 Calden Interview, *supra* note 1.
- 26 *Id.*
- 27 *Id.*
- 28 *Id.*
- 29 See Martinez, *supra* note 6.
- 30 See Nat'l Coalition for Homeless Veterans, *FAQ About Homeless Veterans*, [hereinafter *FAQ Homeless*], available at [http://nchv.org/index.php/news/media/background\\_and\\_statistics/](http://nchv.org/index.php/news/media/background_and_statistics/) (last visited Nov. 15, 2013).
- 31 *Id.*
- 32 See Mary Shinn et al., *'Back Home': VA workers rewarded for avoiding difficult disability claims*, MINNPOST, Aug. 27, 2013, available at <http://www.minnpost.com/politics-policy/2013/08/back-home-va-workers-rewarded-avoiding-difficult-disability-claims>.
- 33 Martinez, *supra* note 6.
- 34 See Shinn, *supra* note 32.
- 35 *Id.*
- 36 *Id.*
- 37 *Id.*

38 See *FAQ Homeless*, *supra* note 30 (indicating that 62,619 veterans are homeless on any given night).

39 U.S. Dep't. of Veterans Affairs, *Homeless Veterans*, [hereinafter *Homeless Veterans*], available at [http://www.va.gov/homeless/about\\_the\\_initiative.asp](http://www.va.gov/homeless/about_the_initiative.asp) (last visited Oct. 25, 2013).

40 *Id.*

41 See Glantz, *supra* note 20.

42 Press Release, VA Processes Claims, *supra* note 13.

43 See *Homeless Veterans*, *supra* note 39.

44 Calden Interview, *supra* note 1.