AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

EXAMINING VA'S PROCESSING OF GULF WAR ILLNESS CLAIMS

JOINT HEARING

BEFORE THE

SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

JOINT WITH

SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS

OF THE

COMMITTEE ON VETERANS' AFFAIRS
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED FIFTEENTH CONGRESS

FIRST SESSION

THURSDAY, JULY 13, 2017

Serial No. 115–23

Printed for the use of the Committee on Veterans' Affairs

Available via the World Wide Web: http://www.fdsys.gov

U.S. GOVERNMENT PUBLISHING OFFICE
30–369 WASHINGTON : 2018

COMMITTEE ON VETERANS' AFFAIRS

DAVID P. ROE, Tennessee, *Chairman*

GUS M. BILIRAKIS, Florida, *Vice-Chairman*
MIKE COFFMAN, Colorado
BRAD R. WENSTRUP, Ohio
AMATA COLEMAN RADEWAGEN, American Samoa
MIKE BOST, Illinois
BRUCE POLIQUIN, Maine
NEAL DUNN, Florida
JODEY ARRINGTON, Texas
JOHN RUTHERFORD, Florida
CLAY HIGGINS, Louisiana
JACK BERGMAN, Michigan
JIM BANKS, Indiana
JENNIFFER GONZALEZ-COLON, Puerto Rico

TIM WALZ, Minnesota, *Ranking Member*
MARK TAKANO, California
JULIA BROWNLEY, California
ANN M. KUSTER, New Hampshire
BETO O'ROURKE, Texas
KATHLEEN RICE, New York
J. LUIS CORREA, California
KILILI SABLAN, Northern Mariana Islands
ELIZABETH ESTY, Connecticut
SCOTT PETERS, California

JON TOWERS, *Staff Director*
RAY KELLEY, *Democratic Staff Director*

SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

JACK BERGMAN, Michigan, *Chairman*

MIKE BOST, Illinois
BRUCE POLIQUIN, Maine
NEAL DUNN, Florida
JODEY ARRINGTON, Texas
JENNIFER GONZALEZ-COLON, Puerto Rico

ANN MCLANE KUSTER, New Hampshire, *Ranking Member*
KATHLEEN RICE, New York
SCOTT PETERS, California
KILILI SABLAN, Northern Mariana Islands

SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS

MIKE BOST, Illinois, *Chairman*

MIKE COFFMAN, Colorado
AMATA RADEWAGEN, America Samoa
JACK BERGMAN, Michigan
JIM BANKS, Indiana

ELIZABETH ESTY, Connecticut, *Ranking Member*
JULIA BROWNLEY, California
KILILI SABLAN, Northern Mariana Islands

Pursuant to clause 2(e)(4) of Rule XI of the Rules of the House, public hearing records of the Committee on Veterans' Affairs are also published in electronic form. **The printed hearing record remains the official version.** Because electronic submissions are used to prepare both printed and electronic versions of the hearing record, the process of converting between various electronic formats may introduce unintentional errors or omissions. Such occurrences are inherent in the current publication process and should diminish as the process is further refined.

CONTENTS

Thursday, July 13, 2017

Page

Examining VA's Processing Of Gulf War Illness Claims 1

OPENING STATEMENTS

Honorable Mike Bost, Chairman 1
Honorable Ann Kuster, Ranking Member 2

WITNESSES

Mr. Bradley Flohr, Senior Advisor, Compensation Service, Veterans Benefits Administration, U.S. Department of Veterans Affairs 4
Prepared Statement 29

Accompanied by:

Patrick Joyce, MD, MPH, Chief, Occupational Health Clinics, Washington VA Medical Center, Veterans Health Administration, U.S. Department of Veterans Affairs

Ms. Melissa Emrey-Arras, Director, Education, Workforce and Income Security, U.S. Government Accountability Office 5
Prepared Statement 30

Mr. Zachary Hearn, Deputy Director for Claims, Veteran Affairs and Rehabilitation Division, The American Legion 7
Prepared Statement 35

Mr. Michael S. Figlioli, Deputy Director, National Veterans Service, Veterans of Foreign Wars 8
Prepared Statement 38

Mr. Anthony Hardie, National Board Chair & Director, Veterans for Common Sense 10
Prepared Statement 40

FOR THE RECORD

Ronald E. Brown, President, National Gulf War&source Center (NGWRC) & Gulf War Veteran 55
Mr. Paul Sullivan, Gulf War Veteran, Director of Veteran Outreach, Bergmann & Moore, LLC 66
Mr. Kirt Love, former member of the Veteran Affairs Advisory Committee on Gulf War Veterans 71
Denise Nichols, MAJ, RET, USAF, RN RET, BSN, MSN, National Vietnam and Gulf War Veterans Coalition 73

QUESTIONS FOR THE RECORD

HVAC to VA 78

EXAMINING VA'S PROCESSING OF GULF WAR ILLNESS CLAIMS

Thursday, July 13, 2017

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON VETERANS' AFFAIRS,
SUBCOMMITTEE ON OVERSIGHT
AND INVESTIGATIONS,
Washington, D.C.

The Subcommittees met, pursuant to notice, at 10:30 a.m., in Room 334, Cannon House Office Building, Hon. Mike Bost [Chairman of the Subcommittee on Disability Assistance and Memorial Affairs] presiding.

Present from the Subcommittee on Disability Assistance and Memorial Affairs: Representatives Bost, Bergman, Coffman, Radewagen, Banks, Esty, Brownley, and Sablan.

Present from the Subcommittee on Oversight and Investigations: Representatives Bergman, Bost, Dunn, Kuster, and Sablan.

Also Present: Representative Roe.

OPENING STATEMENT OF HONORABLE MIKE BOST, CHAIRMAN

Mr. BOST. Good morning, and welcome everyone. This joint hearing of the Subcommittees on Disability Assistance and Memorial Affairs and Oversight and Investigations will now come to order.

I first want to thank my colleagues, Chairman Bergman, Ranking Member Esty, who should be along shortly, and Ranking Member Kuster for holding the hearing here with me today on the important issue that we are facing. And that is helping Gulf War veterans get the benefits that they have earned.

It should go without saying that we have a duty to take care of the men and women who have been wounded while serving in our military. Unfortunately, too many injured Gulf War veterans are not being taken care of. VA estimates that 44 percent of Gulf War veterans develop Gulf War Illness. Yet, 26 percent of these veterans are receiving benefits. Something does not add up.

On March 15, 2016 during a similar joint hearing on GWI claims, VA testified that it was taking steps to improve service for Gulf War veterans. Yet one year later GAO found VA is still only approving 17 percent of the claims of Gulf War Illness, which is about a third of the approved rate for other claims. For example, a GAO report says that only 13 percent of the claims of veterans that were diagnosed with the illness are approved. I cannot understand that at all. VA regulations state that if veterans have certain symptoms, such as headache, fatigue, or joint pain, VA is supposed to presume

that these symptoms are related to the veteran's service in the Gulf area. Yet 87 percent of these claims are denied.

GAO found that one of the problems is that the VA physicians are applying the wrong standards during the exams. Another issue is that the VA employees are not ordering the exams when necessary. I appreciate that recently the VA retrained all of its employees on GWI claims and I am looking forward to hearing whether retraining these employees made a difference.

I am also frustrated because GAO pointed out that the VA's decision letters are not clear. This issue keeps coming up. As you know, my Appeals Reform Bill, H.R. 2288, would require VA to make its decision letters more clear and useful for the veterans. But it should not take legislation to force the VA to act. I would like to see the VA change its decision letters now so that the veterans understand why VA made the decisions it did.

So GAO also found several other problems that may be keeping the approval rate for GWI claims low, such as the lack of a single case definition for GWI. I am looking forward to an honest discussion about the VA's need to do so and how to ensure that they do. None of us want to come back here next year to find the same problems. After this hearing I intend to work with my colleagues to keep on VA to make sure these changes are made and made this time where we will not have to do it again.

I ask unanimous consent that written statements provided for the record be placed into the hearing record. Without objection, so ordered.

I also want to thank the witnesses for being here today. With that, I want to call on the Oversight and Investigations distinguished Ranking Member Ms. Kuster for her opening statement.

OPENING STATEMENT OF ANN KUSTER, RANKING MEMBER

Ms. KUSTER. Thank you, Chairman Bost. And to General Bergman, and Ms. Esty when she arrives, and to the witnesses for being here today.

It has been 26 years since the beginning of the Persian Gulf War and since that time 44 percent of veterans who served in that conflict have suffered from Gulf War Illness. Sadly, these veterans struggle to receive accurate diagnoses for their symptoms, access to needed health care, and compensation for their service-connected conditions, even with the presumptions that should result in more veterans receiving benefits and not denied claims.

Last year our Subcommittee held a hearing, as the Chairman said, on access to treatment for Gulf War Illness and how more research is needed to develop treatments and get our veterans the health care they need. Now we are back here again. And by the way, this is entirely bipartisan across our Committee, to determine why 83 percent of Gulf War Illness claims are denied by the VA and what we can do to ensure that our Gulf War veterans receive the benefits that they have earned. Gulf War Illness is a chronic, painful, often debilitating disease and veterans suffering from Gulf War Illness deserve disability compensation and to have their condition recognized and treated by VA providers.

Now just this past Monday, the State Veterans Advisory Committee in my home state of New Hampshire, whom I meet with on

a quarterly basis, were criticizing the VA's process for adjudicating Gulf War Illness claims. In fact one of the members of our State Advisory Committee had his own claim for Gulf War Illness denied. And for the veterans in my state and across the country, the VA's process is poorly run and fails to adequately train personnel.

This latest GAO report confirms what our constituents suffering from Gulf War Illness continue to tell us on a regular basis. Their claims continue to be denied because medical examiners do not know how to diagnose Gulf War Illness or the VA fails to apply the presumption that Congress intends to grant this service-connection disability. When these claims are denied, VA does not communicate to veterans, as the Chairman said, the reasons for the denial, leading to veterans becoming frustrated, losing faith in the VA, and filing appeals.

The GAO report found that 90 percent of medical examiners that the VA relies upon to assess veterans' disabilities have not completed the elective training on Gulf War Illness so they can better assess veterans' disability levels. I would like to know why this training is not a mandatory requirement and when it will become mandatory. I would also like to know if this web based training is sufficient to train medical examiners and if claims processors need better training requirements as well.

I also wish to hear from the VA on its plan to improve the way in which it communicates decisions made on claims. When veterans are not provided the reason that the claim was denied, they become frustrated and angry and they end up in our appeals process, which is already swamped. If they do not know why the claims were denied, they can often spend years attempting to obtain their benefits through a lengthy appeals process.

Finally we know that the VA continues to conduct and support research on Gulf War Illness. However, the VA lacks a single case definition, and as I understand it has no plan to develop one. A uniform case definition for Gulf War Illness was recommended in 2014 by the VA's Research Advisory Committee and the National Academy of Medicine. A single case definition is needed to improve research, diagnosis, and treatment of Gulf War Illness and I would like to see a plan put in place to develop a single Gulf War Illness definition. The number of Gulf War Illness claims doubled from 2010 to 2015 and we can expect that more veterans will file claims and will subsequently appeal denied claims. It is imperative that the VA implement the GAO's recommendations now so that Gulf War veterans receive the treatment and disability benefits that they deserve without having to fight the VA every step of the way.

Thank you, Chairman Bost. I yield back.

Mr. BOST. Thank you, Ms. Kuster. And I am going to ask that all Members waive their opening remarks, as per the Committee's custom. I understand that Chairman Bergman and Ranking Member Esty will give their statements at the end of the hearing.

Now I would like to welcome our witnesses again and thank you for taking the time to be here today. Our first witness is Bradley Flohr, Senior Advisor for Compensation Services. He is accompanied this morning by Dr. Patrick Joyce, the Chief, Occupational Health Clinics of the Washington VA Medical Center. We are also joined by Melissa Emrey-Arras—is that correct? Well, now see with

a name like Bost, where people say Bost, I want to make sure that we get everybody's right. Who is Director of the Education, Workforce and Income of the GAO. Zachary Hearn, the Deputy Director for Claims for the Veterans Affairs and Rehabilitation Division of the American Legion; and Michael Figlioli, correct? The Department Director of National Veterans Services of the VFW; and finally Anthony Hardie, the National Board Chair and Director of Veterans for Common Sense.

I want to remind the witnesses that your complete written statement will be entered into the hearing record. And with that, Mr. Flohr, you are recognized for five minutes.

STATEMENT OF BRADLEY FLOHR

Mr. FLOHR. Thank you, Chairman Bost, Chairman Bergman, Ranking Members Esty and Kuster, and Members of the Committee. Thank you for the opportunity to discuss how VA processes Gulf War veterans' compensation claims for undiagnosed illnesses or medical unexplained chronic multi-symptom illnesses. For purposes of my testimony, I will refer to these categories of illness as Gulf War Illness. Today I will provide an overview of VA's processing of Gulf War Illness claims and some of our training and quality assurance efforts.

Service connection may be awarded for Gulf War Illness when a veteran has service in the Southwest Asia Theater of operations after August 2, 1990 and has a qualifying disability in accordance with 38 C.F.R. 3.317. VA recently revised this regulation to extend the date for which service-connection may be awarded for Gulf War Illness from December 31, 2016 from December 31, 2021.

In fiscal year 2016, 18,681 veterans received a decision for a claim specifically for Gulf War Illness. From this number, 4,594 veterans were awarded service-connection for one or more undiagnosed illness or chronic multi-symptom illness. Thirteen percent of these awards were for an undiagnosed illness and 31 percent for a medical unexplained multi-symptom illness.

VBA continues to strengthen its training program for Gulf War Illness claims. We have developed 13 related courses for claims processors and over the last year VBA headquarters mandated ten hours of training for rating veteran's service representatives. In addition, we are currently developing a new training module which will focus on the proper development of Southwest Asia Gulf War claims. This module is scheduled to launch to fiscal year 2018.

VA has implemented a number of other initiatives to improve Gulf War claims processing, to include improvement of the notification process, specifically to include a more thorough explanation when a claimed issue is denied. In recent years VA has developed special tracking to specifically account for Gulf War claims. VA has also amended its Gulf War general medical examination template to include important information for examiners when address undiagnosed and chronic multi-symptom illnesses, as well as information on various environmental exposures in the Gulf War.

VA is constantly looking for ways to improve benefits and services it provides to veterans who served in the Gulf. VBA works closely with the Veterans Health Administration in reviewing the research done by its Offices of Public Health and Research and De-

velopment, as well as the National Academy of Medicine's biennial updates on Gulf War issues. VBA also works with VHA and the Department of Defense in joint work groups that research environmental exposures coincident with military service. VBA collaborates with VHA to update training for its medical examiners, as well as VBA's contract medical examiners. And finally, VBA's national quality review staffs, as well as local quality reviewers in our regional offices, continue to ensure employees correctly process and decide claims for Gulf War Illness.

As agreed upon with the National Gulf War Resource Center, VBA conducted two distinct special focus reviews of decisions on claims for Gulf War related illnesses in December, 2015 and September, 2016. The review in 2015 focused on fiscal year 2015 Gulf War Illness cases and showed a 94 percent accuracy rate. The 2016 review expanded the review to cases that involve claims from medical unexplained chronic multi-symptom illnesses over a four-year period, starting from fiscal year 2011. This review showed an 89 percent accuracy rate.

VA continues to improve the efficient, timely, and accurate processing of claims involving service in the Gulf War. Although the science and medical aspects of undiagnosed illnesses and chronic multi-symptom illnesses are complex, VA continues to review scientific and medical literature to gain a better understanding of the impact of these illnesses on our Gulf War veterans.

This concludes my opening statement. I am pleased to address any questions you or Members of the Committee may have.

[THE PREPARED STATEMENT OF BRADLEY FLOHR APPEARS IN THE APPENDIX]

Mr. BOST. Thank you, Mr. Flohr. Ms. Emrey-Arras, you are recognized for five minutes to give testimony for the GAO.

STATEMENT OF MELISSA EMREY–ARRAS

Ms. EMREY-ARRAS. Thank you, Chairman Bost, Chairman Bergman, Ranking Member Kuster, and Members of the Subcommittees. I am pleased to be here today to discuss our recent report on VA's evaluation of Gulf War Illness disability claims.

The exact causes of Gulf War Illness are not always known and veterans' symptoms vary widely. Veterans with Gulf War Illness may experience symptoms such as fatigue, headaches, joint pain, indigestion, insomnia, respiratory disorders, skin problems, and memory impairment. They may also have infectious diseases, like malaria or West Nile Virus. VA refers to claims for Gulf War Illness as undiagnosed illness, medically unexplained chronic multi-symptom illness, and infectious disease claims. We refer to these three types of claims as Gulf War Illness claims.

My testimony today will focus on our findings related to three key areas. One, recent trends in Gulf War Illness disability claims. Two, challenges VA faces. And three, VA's Gulf War Illness research.

In terms of claims trends, we found that the number of Gulf War Illness claims processed has increased in recent years. In fiscal year 2015, VBA completed processing about 11,400 claims, which was more than double the 4,800 claims it processed in fiscal year

2010. Many of these claims included multiple medical issues or symptoms related to Gulf War Illness. On average, we found that Gulf War Illness claims took four months longer to process than other claims. We also found that Gulf War Illness claims were approved at lower rates than other types of disability claims. We found that approval rates for Gulf War Illness medical issues were about three times lower than for all other claimed disabilities. Specifically we found that 17 percent of Gulf War Illness medical issues were approved compared to 57 percent for all other types of medical issues.

According to VA, several factors may contribute to the lower approval rates, including that these claims are not always understood by VA staff. Additionally, veterans sometimes file for Gulf War Illness benefits but according to some VA staff we spoke with do not provide sufficient evidence that their symptoms have existed for at least six months as generally required by VA regulations.

In terms of challenges VA faces, we found that there is inadequate training for VHA medical examiners. VBA claims rating staff often rely on these medical examiners to assess a veteran's disability before they make a decision on a claim. Medical examiners we interviewed said that conducting Gulf War medical exams is challenging because of the range of symptoms that could qualify as Gulf War Illness. The VHA has offered an optional 90-minute web based Gulf War Illness training for its medical examiners since 2015, but according to VHA, training data only showed ten percent of the examiners had taken this training as of this past February. We recommended that VA require its medical examiners to complete training on Gulf War Illness and VA agreed with this recommendation.

We also found that decision letters VA sends to veterans denying benefits for Gulf War Illness claims do not always clearly explain to the veteran how their claim was decided, which can leave a veteran uncertain about how the claim was evaluated and potentially lead to unnecessary appeals. We recommended that VA require decision letters to clearly explain how the claim was evaluated and VA agreed with our recommendation.

In terms of Gulf War Illness research, we found that VA does not have a plan to develop a single case definition of Gulf War Illness. VA advisory groups have emphasized that establishing a single definition could further improve the research, diagnosis, and treatment of veterans. VA's advisory groups recommended that in the near term VA analyze data from its existing datasets and in the long term conduct research projects to contribute to the establishment of the single case definition. VA included in its 2015 Gulf War Research Strategic Plan an objective to establish a single definition, but the agency has no action plan in place to achieve it. Without a plan VA risks engaging in research that is not targeted towards its goal. We recommended that VA prepare a plan to develop a single definition and VA agreed with this recommendation.

Thank you. This concludes my remarks.

[THE PREPARED STATEMENT OF MELISSA EMREY-ARRAS APPEARS IN THE APPENDIX]

Mr. BOST. Thank you. Mr. Hearn, you are recognized to begin the testimony for the American Legion, please.

STATEMENT OF ZACHARY HEARN

Mr. HEARN. Thank you. It is like deja vu, all over again. Ranking Member Kuster, you made this assertion in your opening remarks during the March, 2016 hearing regarding Gulf War Illness. 486 days, one damning GAO report, and thousands of injured veterans and impacted dependents later, we are here again to discuss the adjudication of Gulf War Illness claims by VA. And yes, Ranking Member Kuster, it definitely feels like deja vu all over again.

Chairman Chairmen Bergman and Bost, Ranking Member Kuster, and distinguished Members of the Subcommittees on Oversight and Investigations and Disability Assistance and Memorial Affairs. On behalf of National Commander Charles E. Schmidt and the over two million members of the Nation's largest veteran's service organization, the American Legion appreciates the opportunity to testify regarding the adjudication of Gulf War Illness claims.

Gulf War Illness claims are inherently complicated. Veterans must tread murky waters to gain service-connection for many Gulf War related undiagnosed illnesses. An undiagnosed illness is just as it sounds, a cluster of symptoms that are unexplained and undefined. Veterans seeking treatment for these symptoms are often treated for years and often have multiple diagnoses before VA will acknowledge that the symptoms are related to an undiagnosed illness. It is terribly frustrating for veterans and as seen by a recent GAO report, overwhelmingly denied by VA when service-connection is sought.

VA has previously acknowledged its frustrations with Gulf War Illness. With that in mind, one would think that there would be mandatory training to improve its workforce's understanding of the conditions. However, the GAO report indicated only about ten percent of VA's medical examiners successfully completed an optional course related to Gulf War Illness. This is pathetic. Only one of ten medical examiners have taken the optional course, but yet the other nine of ten are equally qualified to conduct Gulf War related examinations?

Let us also not forget that many examinations are now being conducted by private sector contractors. If VA is not providing mandatory training regarding Gulf War Illness to its own employees, what requirements are being made of those examiners?

The American Legion has over 3,000 accredited representatives located throughout the Nation. These dedicated individuals are the lifeblood for staff in Washington. They are the souls that provide the necessary feedback regarding issues our veterans face regularly. One service officer reported that a VA regional office employee stated that veteran's service organizations receive more frequent and higher quality training than RO employees. Training received as a web based training that often results in various interpretations, ultimately resulting in inconsistent decisions.

Each service officer spoken to prior to this hearing stated that they have had to accept that claims sought for undiagnosed illnesses will have to go to the Board of Veterans Appeals if they ex-

pect the claim to be granted, costing the veteran not months, but numerous years to possibly result in a positive decision. Veterans will provide lay statements detailing symptoms and impacts of symptoms from family members and friends. These statements will have little, if any, impact on RO decisions. However, the service officers report BVA decisions are much more favorable for veterans and take into account those lay statements.

The GAO report combined with American Legion findings paint a bleak picture of the development in adjudication of Gulf War related claims. Medical providers have optional training, of which only ten percent participate, and VBA personnel complain of a lack of adequate training on the subject. Three generations of veterans have potentially been impacted by Gulf War Illness and these concerns have been swirling for over a quarter of a century. Think about this. A 20-year-old deployed troop right now in Iraq was not even born when these symptoms arose and may one day suffer, and we have yet to discover, A, the cause and proper treatment for it, and B, how to properly adjudicate the claims that are associated with it.

It is evident that there is need for improvement and the American Legion is willing to work towards achieving these goals. In the last year VSOs worked with VA in designing an appeals modernization plan that we collectively achieved. We have proven for substantial change to occur it takes VSO and VA collaboration. The American Legion is eager to work with VA and VSOs to accomplish this feat. This is a problem that will not be resolved strictly by finger pointing. It is a problem that will be resolved by agreeing on identified problems and arriving at sensible solutions.

Again, on behalf of National Commander Charles E. Schmidt and the members of the American Legion, we truly appreciate the opportunity to speak with you this morning. I will be happy to answer any questions. Thank you.

[THE PREPARED STATEMENT OF ZACHARY HEARN APPEARS IN THE APPENDIX]

Mr. BOST. Thank you, Mr. Hearn. Mr. Figlioli, you are recognized to present the position for the VFW.

STATEMENT OF MICHAEL S. FIGLIOLI

Mr. FIGLIOLI. Thank you, Chairmen Bost and Bergman, Ranking Members Esty and Kuster, Members of the Subcommittees. On behalf of the VFW, I would like to thank you for the opportunity to testify on VA's disability claims process with respect to Gulf War Illness.

As professionally trained accredited advocates, VFW service officers have work extraordinarily hard to ensure our veterans and their families receive the maximum benefit allowable by law from VA. All too often, however, this does not happen for a myriad of reasons. For today's hearing I will focus on the signature condition of the Persian Gulf War referred to largely across the veterans community as Gulf War Illness, or more commonly in VA as medically unexplained chronic multi-symptom illness.

Unlike nearly all other claimed conditions, Gulf War Illness is intrinsically difficult to diagnose and treat. Gulf War Illness has no

clear and concise set of rules. In other words, no one distinctive set of symptoms that allow for a single, unmistakable diagnosis. Gulf War Illness presents itself as a conglomeration of possible symptoms to which countless members of the general public with no military experience can also be subject. As such, Persian Gulf veterans have a steeper hill to climb in relating the symptoms to service, the most critical link in establishing service-connection.

None of this is remotely possible without the benefit of a VA exam. As VA continues to evolve on a number of fronts, such as electronic business management, VA developed disability benefits questionnaires, or DBQ, with an eye towards efficiency and timeliness. Last year the VFW strongly advocated for the elimination of the parsing out of symptoms and placing greater concentration on the clustering of these indicators of potentially one illness affecting multiple body symptoms as opposed to specific conditions related to each symptom. Put more simply, the VFW feels Gulf War Illness claimants would be better served by VA eliminating the assignment of multiple DBQs and posit from the outset that the evidence meets the criteria for Gulf War Illness. It remains our contentions that the current system of assigning separate DBQs for each symptom claimed in association with Gulf War Illness promotes incorrectly assigning a diagnosis to a condition linked to Gulf War Illness, which ultimately results in the veteran's claim being denied.

More than a year ago these Committees met to discuss this topic and pressed VA to develop a single DBQ for GWI that would assist in establishing service-connection. Regrettably, VA has not reported any progress in developing this DBQ and veterans continue to have their claims denied. VA continues to rely on a Gulf War Illness general medical DBQ that is not singular in nature for claims for Gulf War Illness but instead rely on a subjective non-medically trained construal of a claims assistant to interpret a veteran's claimed conditions and schedule the appropriate VA exam. When asked about the possibility of a more favorable DBQ the response of record was that VA would look into the issue, and first we had to confirm that the lack of a single DBQ is a real problem. Mr. Chairman, let us stop mincing words. We know this is a problem and GAO agrees.

This continued problem also has the downstream effect of the appellate process. VFW advocates at the Board of Veterans Appeals continue to find numerous inconsistencies when decisions are remanded to the VA regional office. In assessing pending appeals for Gulf War Illness, the VFW notes that VA appears to clearly favor finding a diagnosis for each reported symptom and thereby rule out Gulf War Illness rather than further developing and accurately applying the rating schedule with a diagnosis that is even a minimally supported one. The VFW urges VA to consider both possibilities as existential. Since the preponderance of evidence shows the possibility that Gulf War Illness may exist, the balance of evidence as to Gulf War Illness' non-existence is equal or in equipoise. Therefore, VA's own regulations show that VA should develop the claim for the potential grant of Gulf War Illness disability.

The VFW suggested in prior testimony that inconsistencies in the application of the rating schedule is universal across the VA regional office spectrum with regard to claims for Gulf War Illness

disabilities. While we are not in any way suggesting that this is deliberate, we continue to put forward that a grant for Gulf War Illness in Michigan should be exactly the same in New Hampshire, or any other VA regional office, based on the same evidence and fact pattern. VA's Office of Performance Analysis and Integrity has demonstrated their capability to track data nearly to the keystroke. This presents the perfect opportunity to identify and develop best practices across VA in properly adjudicating claims for Gulf War Illness and eliminate the disparities. At the very least with VA's national work queue, VA could easily distribute these specialized claims to the regional offices that have a proven track record in proper adjudication of Gulf War Illness claims.

As one of the large Nation's VSOs responsible for providing direct assistance to veterans seeking their earned benefits, the VA thanks the Subcommittee for conducting oversight regarding Gulf War Illness claims. We ask that you join us in urging VA to adopt a single DBQ for all Gulf War Illness claims.

Mr. Chairman, this concludes my testimony. I will be happy to answer any questions you or the Subcommittee Members may have.

[THE PREPARED STATEMENT OF MICHAEL S. FIGLIOLI APPEARS IN THE APPENDIX]

Mr. BOST. Thank you, Mr. Figlioli. Mr. Hardie, you are recognized for five minutes.

STATEMENT OF ANTHONY HARDIE

Mr. HARDIE. Good morning, and thank you, Chairmen Bergman and Bost, Ranking Members Kuster and Esty, and distinguished Members and staff for this hearing and the opportunity to speak with you today. Thank you, Gulf War veterans, we know you are watching live from all over the country and what happens here today matters to you most of all.

I am Anthony Hardie, National Chairman and Director of Veterans for Common Sense, and a U.S. Army veteran of the Gulf War and Somalia. We appreciate last year's Gulf War hearings and today's follow-on hearing to try and fix these many unresolved issues. Included in our written statement are many identified issues and recommendations and pages of heartfelt, painful stories from Gulf War veterans from all over the country, written in their own words, just a few of the tens of thousands whose denied VA claims left them hurting, bewildered, distraught, and angry.

A Maryland veteran describes what it is like to actually live with the chronic fatigue of Gulf War Illness, saying, "I slept fourteen and a half hours, woke up for three, slept for another eight and a half. This is right off my Fitbit. Yet I have been denied each time. How am I supposed to work when I literally cannot get out of bed? This is not how I saw my life at 47 years old."

They write about losing their health, their jobs, their finances, and even their homes. All write about VA improperly denying their presumptive Gulf War claims, exactly what GAO writes about in their report. One from Louisiana even writes about having to instruct a VA supervisor who had it wrong, and calling the White House seeking resolution. A Kentucky veteran wrote, "I filed for a

constellation of neurologic symptoms and was denied for each symptom of my undiagnosed illness." Others say the same thing or their symptoms being attributed to diagnosed conditions and then denied. That is the crux of the problem.

It is now 23 years since Congress enacted the well-intentioned 1994 law that created a presumption for undiagnosed illness symptoms. A written statement details later fine-tuning by Congress and VA. Today we have heard about GAO confirming VCS' earlier findings, that VA denies Gulf War Illness at a rate of greater than 80 percent. We see in their report that is three times the denial claim of any other claim, that the denial rates for undiagnosed illnesses are the worst of all, and that these trends are worsening over time and are now actually 87 percent overall, and get this, 90 percent for undiagnosed illness.

We see from their report that these claims also take 50 percent longer than other claims, meaning veterans who are the worst off suffer the longest, and that VA underreported Gulf War Illness claims by 57,000 issues, masking the true scope of this already egregious problem. The fact that VA developed evidence that led to these denials leaves the door open for potential litigation.

Given GAO's findings that VA has not heeded external or even internal recommendations, a finding that mirrors our exasperated experiences, we are glad VA leaders seem to be stepping up to the plate to fix GAO's three basic recommendations. However, in reviewing VA's disability benefits questionnaires using claims processing, many if not most for diagnosed health conditions begin with this first basic question, does the veteran have this diagnosis? But that basic question obviously does not work for undiagnosed illness claims. And when GAO reports that some claims examiners will never find in favor of an undiagnosed illness, and will always attribute a veteran's symptoms to a diagnosable illness, that is most damning, showing that it is inevitable these claims will continue to be denied at near total rates no matter how much training is conducted.

Collectively this decades-long body of evidence makes it clear. Undiagnosed illness as a judicable VA claim simply does not and cannot work. It is now beyond clear what we need to do. A statutory fix along the lines of what we propose in our written testimony is needed or we are going to keep having these investigations and hearings that all say essentially the same thing, decade after decade. We ask that Congress work in a bipartisan manner with President Trump to enact legislation to once and for all fix Gulf War Illness claims and the many other Gulf War issues we raise in this and previous testimony. And if VA is serious about resolving these issues, and the ones that the veteran raises in the last paragraph I am about to read, then VA leaders should leap at the chance to work with stakeholders and Congress to craft this legislation together if for no other reason than the human impact of VA's denial of nearly all Gulf War Illness claims is all too real.

Listen carefully to these words written by a fellow Wisconsin veteran. "I was told there is a two-year wait before my appeal will even be opened, and that it's now up to four years. Over the last ten years I have lost two jobs and have lost my home and land due to bankruptcy. We have had to move twice and change schools,

which is really tough for my kids. I feel like I am on the verge of losing another job and I am afraid I cannot rebuild things again. My VA psychologist told me Wednesday that it was an awful long time to hold onto life by my fingernails and I agreed. I have put a belt around my neck twice and told my doctor Wednesday that I would blow my brains out if I am denied again. Twenty-two per day do not kill themselves because of PTSD. It is for being continually denied and called a liar by the administration that is supposed to be helping us. Veterans, and particularly those of war like me, look at life very differently than most. If I have no hope, I will not continue to be a burden on myself, my family, or my country. I will, however, do my best to let them know I was destroyed by the VA."

[THE PREPARED STATEMENT OF ANTHONY HARDIE APPEARS IN THE APPENDIX]

Mr. BOST. As soon as I turn my microphone on I will start. I do want to thank you all for being here and for your testimony. But I do want to start with a question. Mr. Hearn, do you think the VBA's adjudication manual provides useful guidance for VBA employees related to the Gulf War Illness?

Mr. HEARN. When preparing for the testimony I was reviewing the manual and I think it is fairly clunky in the way that it is written. And I question as to whether to not aspects of Joyner or more recent cases is applied properly in there and alerts the staff.

I understand why the raters, and more importantly the VSRs, are having difficulty understanding what to do. And I think when you look at the VSO, the VSO does not use the manual when advocating for a case. And you know else does not? The Board of Veterans Appeals. So it is funny that the one aspect that seems to be different is this manual and a VBA rater. So that certainly is a concern with the way that VA goes about dealing with these types of cases.

Mr. BOST. Mr. Flohr, how do you respond to his statement about where we are at with this right now?

Mr. FLOHR. Thank you, sir. First of all, I would like to say that a week before last I had my 42nd anniversary working at the Department of Veterans Affairs, all of them here in Washington, D.C. All kinds of jobs, from a basic adjudicator to where I am now. And we used to have a very, you know, the manual, or adjudication procedures manual was all in paper, it took forever to make changes to get them to our adjudicators out in the field and our field stations. Now it is a live manual. We call it a live manual because it is live. It is online. We make changes easily, whenever we find a change that needs to be made, we can do it. We have a large staff that can do that. It is very much superior to what we used to have.

Is it perfect? Now. Nothing is going to be really always perfect, because there are always changes. There is either a court decision, or new legislation that is going to require us to make changes to what we currently have. But we do a lot of training. We have a very large training staff that works very hard to train our adjudicators and our rating specialists in making the right decisions.

These claims are difficult. For example, an undiagnosed illness. Any of you who are physicians know that when a veteran presents,

or anyone presents, to you with a constellation of symptoms, the first thing you do is try to diagnose it. Because if you cannot diagnose it, you cannot treat it. If you treat it, you possibly could do some hard if you treat it with the wrong type of medication. So that is one reason why it is so difficult, undiagnosed illness claims. We request an examination. The examiners do all indicated tests to try and determine what the veteran has. And if they cannot, we ask them to report to use the veteran has an undiagnosed illness of the respiratory system, the cardiovascular system, whatever body system it may be. And when that gets relayed to us, we grant the claim.

As I said, unfortunately a diagnosis often is made. And then when a diagnosis is made, then the direct service-connection criteria of statute comes into play. We must find evidence that the veteran had that particular disability while they were in service, they currently have it now, and then determine how disabling it is.

Mr. BOST. Mr. Flohr, I do not want to interrupt but I do have another question I have to get to while my time is limited. You know, the VA issued a training letter on February, 2010 that details VA should develop a claim for Gulf War Illness. For example, the letter instructs VA employees on when to request a disability exam for Gulf War Illness. However, GAO found that employees have different interpretations of VBA's policy despite VBA's steps to clarify that with guidance. I think we can all agree that adequate exams, if one was requested, are critical to correctly process these claims. The Fast letter that was issued seven years ago, even despite the lack of additional clear guidance in the manual, so why is it that VA employees still have such difficulty knowing when to request an exam for these claims?

Mr. FLOHR. That is a good question. As I said, our live manual is pretty clear, at least in my view. But one of the other, it was not a recommendation made by GAO, but it was an expression that we should do perhaps a consistency study on when to schedule an examination.

Mr. BOST. Maybe Ms. Emrey-Arras—I love just messing that up. I am so sorry.

Ms. EMREY-ARRAS. Melissa is fine.

Mr. BOST. Okay. Melissa, what do you think the reason is?

Ms. EMREY-ARRAS. VA told us that they were in fact planning to do a consistency study to evaluate just this issue, about consistency in referrals for medical exams. And they told us that they would be doing it the third quarter of this fiscal year. So I think that is an excellent question to ask of VA, in terms of what is the status of that consistency study.

Mr. FLOHR. I am glad to tell you that it was completed in April, which was in the third quarter. We gave it to a lot of our VSRs, our veteran service representatives, when there was a wrong answer. And as with most consistency studies, you find some answers that are not quite right, and particular in Gulf War claims which are very complex. But after the exam was given, then the people who took the exam were taken to a room and provided post-examination training to ensure that they knew the right answer, what it is going forward, they would not make the same mistakes again. So that was completed.

Mr. BOST. Can we get the results of those studies for the record, please?

Mr. FLOHR. Yes. I will be glad to provide those.

Mr. BOST. Okay. Thank you. My time is actually expired, and I hate to do that to Ms. Esty when she first walks through the door. But Ms. Kuster did have to leave to another meeting. Ranking Member Esty is here, if she is ready for—I was going to hope to do that for you.

Ms. ESTY. Thank you all very much. I appreciate you being here. Sorry, this is the fourth or fifth—I started at six a.m. this morning. So it is just one of those days. It is going to be long. NDAA days are long with many different commitments.

I really want to thank all of you very much for your efforts and for really partnering with us. This Committee prides itself on bipartisanship and on getting things done for veterans, and making sure the VA works well, and that we are serving people the way we need to. And as technology changes, and as the needs of our veterans change, and who that population is, that is going to change over time. And we will not always get it right but we are always going to try. And we count on you doing the same thing, too, and giving us a little nudge sometimes when we do not, and figuring out how we can all do this better.

An issue I want to really look at it, because I hear about it all the time in my district, and we have talked about it before in hearings here, is on decision letters. And on the lack of clarity in decision letters. I am a lawyer. I read those decision letters, I cannot tell what they mean. How can our veterans know what they mean? It is disrespectful and it leads to appeals and leads to frustration and a feeling of disrespect. So if people could talk a little bit about what actually can we do? This is an incredibly high priority for me, not just because I am the Subcommittee Ranking Member and I want us to deal with those claims. Because it is just wrong to be sending out letters that do not have clarity. So what can we do to get greater clarity in average people speak? This should not, you should not have to have a Ph.D. to figure out what these letters mean. And I do think it is disrespectful, which is number one a problem. Number two, it leads to appeals. And it leads people to disengage. So we have to find a better way forward. So I would love to hear your thoughts on this, as we are moving forward to make changes here. Thank you.

Ms. EMREY-ARRAS. This is Melissa Emrey-Arras, GAO. I would say that we found that the letters did not specifically inform veterans that their claims had been considered in terms of presumptive eligibility. And the language made it seem like only direct service-connection had been considered. So if you were a veteran expecting a presumptive claim, and you saw the letter, you would think that that was not evaluated appropriately.

Mr. FLOHR. And VA accepted that recommendation and we have plans to change our letters by the end of August to provide that information. But I think perhaps we need to look at it in more detail to see where we can make it even more clearer and we will do that as well.

Mr. FIGLIOLI. Ms. Esty, Mike Figlioli from the VFW. This is a great concern to our organization, as it is to the American Legion

and the other VSOs. The number one thing about these letters, as you said, they are convoluted. They are not written in English. They are not written in plain language that the average citizen can understand. And it is not just related to Gulf War Illness. This is for every disability. This is for every communication with the VA. Every letter has to meet certain requirements. But they can outline in that letter, to prove your claim you need to provide, A, B, C, and D, not the standard cut and paste blurb that there is evidence of record but we had to deny the claim because there is no diagnosis that this was occurred or was caused by service. That tells the veteran nothing. We have been after the VA for a number of years to make them simpler, make them straightforward, and allow the veteran to understand the shortcoming and then correct the deficiency so that we can go ahead and approve the claim. Thank you.

Mr. HEARN. Good morning, Ranking Member.

One of the issues that we have noticed over time and especially in the appeals inventory is that the VA kind of shot themselves in the foot with these letters, right? Because a lot of veterans are appealing cases or appealing their claims, but they don't know what they are appealing, they don't know why they are appealing. They just know that they feel like they kind of got messed over by VA.

And so, like Mike was saying, they will sit there and they will say to gain service-connection, you must have the following. Well, why don't they identify it? Okay, you have a diagnosis, you have an incident of service, but yet we don't have a doctor's note linking the two conditions. And I think that is what is creating a lot of confusion. Like you said, you know, you shouldn't have to have a PhD or some sort of advanced degree just to be able to figure this out.

And, unfortunately, this has been a problem that we have been calling for years and years and years, and really in the appeals modernization, that was a caveat for this whole thing. And so we are very much looking forward to it.

Ms. ESTY. Can I respectfully suggest that when VA has a draft letter ready they circulate it to this Committee and they circulate it to the VSOs?

And I fully agree, I think it ought to be broken out with a checklist with numbered, so you can actually visibly see this criteria must be met, the following was/was not met. These would be documentation.

So it is really clear and it is really easy to do a checklist that is the military way. Don't bury it in the middle of a paragraph in lawyerese. Break it out so that you can easily understand what that means.

So I would urge the VA to circulate that to us. I know I work with some behavioral economists, I want them to take a look at it, and I would like to have some actual veterans look at it and say, does this make sense to you? If you read this, what would you understand that you need to do? And I think that would help us all get to the objective we share.

Thanks very much and I see I am over time.

My apologies, Chairman Bergman. Thank you.

Mr. BERGMAN. No apology is necessary. You know, quality, you should never put a time limit on good quality.

Mr. Coffman, you are recognized for five minutes.

Mr. COFFMAN. Thank you, Mr. Chairman.

And I just want to say first, as a Gulf War veteran, how disappointed certainly I was in the aftermath of the war and to this day that the Department of Defense I think participated in a cover-up, and that cover-up was the exposure to chemical weapons.

And that I can remember the Marine Corps limit of advance in the first Gulf War was kind of the northern end of Kuwait on the Iraqi border and I can remember in the aftermath of the fighting, and you have tremendous visibility in the open desert, seeing this white cloud close to the ground, not moving, and reported that in. And I didn't think there was a question at that time—well, we knew, I knew later on, years later on what it was, and it was that combat engineers of the United States Army were blowing chemical weapons in place because they didn't want to go through the hassle of all the decontamination stuff.

And so we were fortunate, the Marines I was with were fortunate that we were not downwind from it, that the wind patterns were moving in the other direction. So none of the Marines I served with came down with Gulf War Illness.

But the Department of Defense denied for I believe about a five-year period in the aftermath of the war that the U.S. troops were ever exposed to chemical weapons and it wasn't until, you know, they were forced to admit it later on that they in fact were, that they did blow chemical weapons in place.

And so we got off to a very bad start in terms of research, that that was not one of the aspects that were researched, because the Department of Defense was so vehement in denying that that was in fact true. And so it certainly left a bad taste in my mouth as a Gulf War veteran in terms of the integrity of the United States Government relative to veterans.

And so, but I think my question at this point is, in the training of these disability folks that do the processing, review the claims, there doesn't seem to be any uniformity in the training. And as I understand it, there is a course that is optional for them to take and I think it is online. And I guess let me ask the VA, why isn't there mandatory training for the folks that review these claims?

Mr. FLOHR. Thank you. Are you referring to the training for medical examiners who provide medical opinions or the people that make the decisions?

Mr. COFFMAN. Well, I think that is a good question. How is it for both?

Mr. FLOHR. Well, for us, for VBA, every time we hire a new group of individuals, we have a very large training staff and they get sent away to either Baltimore or Denver, we have training academies there. They go through a lot of training, at least six weeks—

Mr. COFFMAN. Relative to the Gulf War?

Mr. FLOHR. To all particular claims, all types of claims.

Mr. COFFMAN. Okay.

Mr. FLOHR. So they get an initial group of training, then every year they are required to complete training as well and updates.

Mr. COFFMAN. Okay. GAO, maybe you can respond.

Ms. EMREY-ARRAS. The medical examiners are not required to take training specific to Gulf War Illness issues. It is elective and,

because of their high caseloads and the fact that they don't have a lot of time for elective training, only about ten percent of the medical examiners have taken training on Gulf War Illness.

Mr. COFFMAN. American Legion?

Mr. HEARN. Thank you, Congressman. The training—and that is something that we have a lot of concerns about and I addressed it during my remarks was that on the medical side, I mean, you have to remember these are doctors and doctors are a lot like mechanics, right? You don't take your car in to the mechanic and say fix my brakes, and the guy comes out and says, I don't know what it is. That goes against their DNA, they naturally are going to create a diagnosis. I think that is just how they operate.

So if the doctor comes back and says, I don't know, that is a pretty rare circumstance. But then what the big concern is, is that you have VA as a department has said this is a priority of ours, but then only ten percent have taken it? It kind of makes you wonder if there is just lip service being paid.

And then the second aspect of it is that we have started going to these contracted examinations. If they can't get it right with their own employees, what is going to happen when QTC or one of these other providers in the private sector are having these examinations, are they getting the proper training? And so which Gulf War veterans are going to be impacted by these private sector physicians?

Mr. COFFMAN. Thank you, Mr. Chairman. My time is up. I yield back.

Mr. BERGMAN. Thank you, Mr. Coffman.

Ms. Brownley, you are recognized for five minutes.

Ms. BROWNLEY. Thank you, Mr. Chairman.

And thank you all for being here this morning. This is a very important topic.

So the GAO presented VBA with a set of recommendations on this issue and you have said and agreed to all of those recommendations. Can you in a general way, can you give me an idea of when you might complete all of these recommendations and have them operating in a way that is more effective?

Mr. FLOHR. Yes. Thank you for that question.

We did accept and concur with the three recommendations. We appreciate GAO's looking at this, they are always instrumental in helping us do a better job of what we do and we appreciate that.

The recommendation to ensure that VHA medical examiners take this 90-minute training has been accepted by VHA, it is going to be made mandatory, and as—

Ms. BROWNLEY. Do you think 90 minutes is enough?

Mr. FLOHR. I will let Dr. Joyce answer that.

Dr. JOYCE. I would like to address that. The 90-minute training course described by others as being optional is a mere fraction of the training required to do a Gulf War examination or any other kind of CMP examiner. These physicians, nurse practitioners, or physician's assistants are first licensed, privileged, and experienced before they do Gulf War examinations.

This additional course of 90 minutes will be mandatory and will be completed by November, but it is supplemental to their underlying training as health care professionals which allow them to ad-

dress this very complex subject, a subject that is not easy to define and has challenged even the learned colleagues at the National Academy of Medicine.

Mr. FLOHR. As far as number two, I think I already said we concur with that as well and we will have our decision notification letters completed, changes made to them by the end of next month.

And number three is the single case definition. We do have a plan to do that.

Ms. BROWNLEY. What is the plan?

Mr. FLOHR. The plan is to get a lot of smart people together and try and figure it out.

Ms. BROWNLEY. What is the timeline?

Mr. FLOHR. The timeline is March of 2018 right now. But, you know, we asked the National Academy of Sciences to do this several years ago, they couldn't do it. It was that difficult, so they threw it back to us, and we are going to try and do that. We are going to get people from DoD, people from the Veterans Health Administration, from VBA, from the National Academies, if we can, whoever we can get who is smart about this. People from our War-Related Injury and Illness study centers here in D.C. and New Jersey, Palo Alto, they see a lot of Gulf War veterans.

So we really will appreciate their input in trying to come up with a single case definition, but we do have a plan and we have already started.

Ms. BROWNLEY. Well, certainly my expectation is that the VA would be the experts when it comes to Gulf War Illness and the VA should not have to look to other entities for that, the research. I mean, this is what it is all about is, you know, why the VA in its mission, is because they are serving our veterans with all kinds of illnesses, but there are specialty illnesses that are just not out in the world other than within the VA.

And I think, you know, back to the medical training, yeah, I agree that the doctors that come to the VA are well-trained doctors, I don't dispute that for a second, but a 90-minute, Web-based course to me seems like it is really not deep enough, you know, to really understand, you know, sort of what veterans are going through and understanding it. But certainly it is a step in the right direction to require that everybody take the course, so I certainly agree with that.

Dr. JOYCE. I am in complete agreement with you: it is not sufficient to take that 90-minute course and to call yourself a Gulf War examiner. It is a mere supplemental course to make us better able to answer the technical questions from the Veterans Benefits Administration and I would be doing a disservice to my colleagues to suggest you could be certified that quickly.

Ms. BROWNLEY. So with regard to the manual has been spoken of and you talked about it being live, you can make changes as we go. The American Legion described it as clunky, you described it as clear. Do you really think the manual is fundamentally, absolutely clear?

Mr. FLOHR. It is large, it is very large and it is full of a lot of information. And I have not processed claims myself for many, many years, so I don't necessarily always use the live manual if I want to look up something. Like I looked up what was in there on

Gulf War Illness before I came here and there is a lot of information there that needs to be digested, and it may at times lead people to be somewhat confused. I am not sure about that, again, but there is a lot there and when we need to change something, we can do it immediately, and that is what is the best part about it. Plus, everyone else can see it as well.

Ms. BROWNLEY. Well, I think that is good, the transparency piece is good.

Mr. FLOHR. Yes.

Ms. BROWNLEY. But, you know, clarity is also important. And I think that all goes back to the definition and other kinds of things, you know, that we are talking about.

And I know my time is up, but I would just like to hear from VBA, not now but if you can get back to me. You know, the opening of this hearing started about a deja vu, that we have had this conversation, we had it a year ago, and I would really like to know the work that has been done since last year up until this point. Now we are talking about a year later, we are talking about meeting some recommendations yet into the future. But, you know, I would like to have that conversation offline.

And I apologize, I yield back.

Mr. BERGMAN. Thank you, Ms. Brownley.

Dr. Dunn, you are recognized for five minutes, sir.

Mr. DUNN. Thank you very much, General.

I would like to channel a comment made by Mr. Hearn a little earlier where doctors don't like to say they don't know and you are absolutely right, we don't like that, but we can be trained to say that. And my next comment is directed to Dr. Joyce and Mr. Flohr.

So I want to stipulate something just among us here. Can we agree we do not understand Gulf War Illness Syndrome is a disease? None of us do and there are no experts anywhere that have some comprehensive understanding of the pathology of this disease. Do you agree with that?

Dr. JOYCE. I do, Dr. Dunn.

Mr. DUNN. You do. Okay, good.

So, now we all agree that the claims are rising, the denials are rising as well. Clearly, some of our Gulf War veterans are not having their conditions properly recognized and treated, we can agree on that?

Dr. JOYCE. Yes.

Mr. DUNN. Yes? We can agree clearly that some of the veterans are not being recognized and treated for Gulf War Illness Syndrome?

Dr. JOYCE. Some, but not all.

Mr. DUNN. Some, some? Not all of them, some?

Dr. JOYCE. Dr. Dunn, using the word "some" as we medical doctors do, I will agree with you.

Mr. DUNN. Thank you, thank you. In medical terminology. That's good, because I haven't been up here long enough to use anything other than that kind of terminology.

So given that and we know that the DoD has spent between '94 and 2016 over $172 million on research in hopes of simply clarifying the presumptive list of conditions, sort of that basket of pathologies that fit into Gulf War Illness Syndrome, and we have

made no new changes or additions in seven years, since 2010, you know, my question is this, that can we, can you, can we together promptly finalize some diagnostic criteria for Gulf War Illness Syndrome and then address the prompt rollout of administrative, financial, and medical action to help these deserving soldiers?

Emphasis on prompt.

Mr. FLOHR. You are talking about prompt training for medical providers, examiners?

Mr. DUNN. So you do have to. But just going back to Mr. Hearn's remark, you know, doctors don't like to say they don't know, but if you go to a doctor and say nobody knows, not just you in this clinic, nobody knows Gulf War Illness Syndrome, but here's this basket of symptoms that fit this criteria, use this Chinese menu of pathologies, and if your soldiers fit these criteria and they were in the Gulf War, then they presumptively have Gulf War Illness Syndrome and they get their financial disability, whatever, and medical treatment such as we know at the time going forward. And we know there will be advances. I spent my evening reading the proteomic and genomic and microRNA studies on Gulf War Illness Syndrome, fascinating stuff, but not clinically relevant just yet, but it is okay. I think you can go to your doctors, I have worked at a VA hospital, and say nobody knows, not just you. Can you make this diagnosis and help this soldier?

Mr. FLOHR. Well, you know, the Gulf War Illness is described in statute and regulations. If a veteran has a chronic, multi-symptom—medically unexplained, chronic, multi-symptom illness, which is defined in the statute as, such as—

Mr. DUNN. Pretty clearly, the system isn't working yet for them.

Mr. FLOHR [continued]. —fibromyalgia—

Mr. DUNN. I mean, so defining it in statute, maybe getting the lawyers involved was the wrong group, maybe we need to get the doctors involved in it, you know.

Mr. FLOHR. That would be good, but if a veteran has one of those fibromyalgia, chronic fatigue syndrome, or functional GI disorders, if a veteran of the Gulf War—

Mr. DUNN. Things we sort of understand.

Mr. FLOHR [continued]. —has one of those, that is presumptive and we should be granting those immediately. And if we are not, please let me know, if you can—

Mr. DUNN. All right. So my charge I guess would be, you know, and I heard you suggest you might do this by March of '18 to Ms. Brownley's question, is to roll this out really, really promptly. No more fooling around with it, we have been fooling around with it for a long, long time. We need to take some clear action to help these poor soldiers.

And in my final 45 seconds I would like to ask, I guess you, Mr. Flohr, what would you have us say to our constituents who perceive that they have a medical condition, Gulf War Illness Syndrome, arising from their service in the Gulf War, and yet that is not being recognized by the VA? And that happens to us on a weekly basis.

Mr. FLOHR. Well, I would say—

Mr. DUNN. All of us, not just my office.

Mr. FLOHR. Sure, I understand. I would say to them that if they have a disability they think resulted from their Gulf War service and if it has been diagnosed a chronic, multi-symptom illness, they certainly need to provide that medical evidence when they file their claim from their private provider or whoever it might be. If they only have symptoms, if they don't have a diagnosed illness, then we are going to do what we need to do, which is request an examination.

And then under the law, if after all indicated tests are done the examiner cannot arrive at a diagnosis, we want—

Mr. DUNN. But this should be cookbook, I mean, really, it should be cookbook, right?

Mr. FLOHR. Yes, it should.

Mr. DUNN. Okay. Well, let's get the cookbook out there and—

Mr. FLOHR. But it is not easy. That's the thing, it is not easy.

Mr. DUNN. That is why we went to med school. All right.

Mr. Chairman, I yield back. Thank you.

Mr. BERGMAN. Thanks, Dr. Dunn.

Mr. Sablan, you are recognized for five minutes, sir.

Mr. SABLAN. Thank you very much, Mr. Chairman.

Good morning, everyone. Thank you for joining us today.

I am new to this Committee and I asked to join because I have seen a spike of veterans coming to the congressional office asking for help. They go see a doctor or a medical professional and they are told, no, nothing is wrong with them. And here we are discovering that nobody really knows the entire story or whatever it makes of some of the illnesses from the Gulf War. And I am talking about Gulf War veterans primarily.

I had a week two months ago dedicated to just talking to veterans in a group setting, in a one-to-one basis, and all of these veterans have filed claims and they are still suffering. Some of them suffer in quiet, they quietly suffer because they are told nothing is wrong with them.

Now, Dr. Joyce mentioned that a VA physician who usually examines a Gulf War syndrome or illness specializes in this issue. So let me ask you—and that the GAO reports that only ten percent do these Web service training—so let me ask you, contracted medical examiners, I mean private doctors who are contracted to do this, because I don't have a VA clinic in my district, what makes you determine that that doctor knows what they are doing, a general internist, internal medicine doctor?

Dr. JOYCE. So as a general rule Gulf War exams are an exemption to the regular contract exams done to these non-specialist and CMP exams.

Mr. SABLAN. Okay, but if they go see a doctor and the doctor said nothing is wrong with them, they can't get a referral to go to Hawaii. Some of these people have no money to go to Hawaii, you know. It costs $2,000 to go to Hawaii. Plus you have to get a car, you have to rent a hotel, get lodging and everything, and you need an appointment. And the doctor is saying nothing is wrong with you. So someone has to make that appointment in Hawaii for them, they have to go to a doctor.

Dr. JOYCE. I think I am going to have to say that we are going to have to get back to you, because I am not personally familiar with the referral system in your area.

Mr. SABLAN. Well, I am sure that there are other private doctors in the Nation.

And again, Mr. Flohr, thank you, sir, for your 42 years of service, but let me ask you. GAO recommends that there should be a requirement that medical examiners complete training courses before conducting these exams for Gulf illness or such a medical conduct—complete training, including such as the 90-minute Gulf War Illness Web-based course, and only ten percent do it. What do you do to the 90 percent who won't do it? Do you give them a bonus? I heard you guys give out lots of bonuses.

Dr. JOYCE. I can address that. When the course is now mandatory, we will be required, myself included, to demonstrate on a computerized record list that goes all the way to the central office that we have completed the course and passed the test showing we took the course; no one will be exempt.

Mr. SABLAN. Thank you, Doctor. I am not pointing fingers, Doctor, I am making just statements because I come from a place, I represent a district where there is no VA clinic and to go to Guam, to go to Hawaii requires a lot of money, and these people don't have money. So they have absolutely no help and so they suffer in silence. And they come to me, and especially when they are told nothing is wrong with them, they come to me and say, what can I do? What can you do for me? And, you know, I can't file appeal papers for them, I don't have their documents.

And does it take the GAO to tell you these things? You have 42 years of service, sir. Do you really need the GAO to tell you some of these things that you have failed to do, that we have discussed a year ago?

Mr. FLOHR. That the medical—that is Dr. Joyce's claim but, you know, we work with VHA to make sure that we get all that we need to make proper decisions.

Mr. SABLAN. Yeah, I'm sorry, I don't mean to be, you know, very—if I appear critical, I don't mean to be. I am just expressing. And I took the stories of veterans word-for-word, I added nothing, I took out nothing, and I presented them to Secretary Kelly—I mean Shulkin, I'm sorry, I am mistaken.

But I really need help in my district and I don't know what else to do. I joined this Committee trying to find help, not to be critical of anybody, and I appreciate that you guys are doing this. I thank GAO also.

I am over my time, but I will tell you that some of the best information I have learned over this series of hearings have come from these people, the VSOs. Unfortunately, I only have the VFW in my district, many of them are Vietnam veterans. But I have put together a list of all VSOs in the Nation and it is going on my Web site, and I am telling these veterans join or go to these VSOs for help. I can't do your things for you, but they could be helpful.

Mr. Chairman, I apologize for being out of time, General. Thank you, sir.

Mr. BERGMAN. No apology is necessary.

My parents raised me to be kind. As a Boy Scout, I was courteous. So I am going to try very hard to maintain my parents' and my scout master's values here in my questioning.

You can tell by the questions from our Members, there is a sense of urgency in this panel, a true sense of urgency; I am not sure I feel that throughout the room.

So, Mr. Flohr, Dr. Joyce, I am going to look at you first. Do you feel a personal sense of urgency in this?

Mr. FLOHR. Yes. And not just for Gulf War veterans—

Mr. BERGMAN. Good.

Mr. FLOHR [continued]. —but all veterans.

Mr. BERGMAN. Good enough. Yes, okay.

So now, since you do, can you give me any examples at the VA over the last, pick your time, two years, ten years that actually would show a sense of urgency from the top on down to get some results?

Let me try it in a different way. Can you give me an innovative program, innovative, that was based on a sense of urgency to shrink the timeframe to develop the capabilities for the individual practitioners necessary to begin to get a handle on this problem? Can you give me one example of innovation other than a 90-minute, optional, online training program?

Mr. FLOHR. I can give you an example of an innovation that is currently underway. It is called—

Mr. BERGMAN. Underway?

Mr. FLOHR. Yes.

Mr. BERGMAN. How about in execution phase? Is underway meaning we are working it up or does underway mean actually being—

Mr. FLOHR. It means that we are working with the Department of Defense, the Veterans Health Administration, to achieve an electronic availability of determining someone had an exposure while they were on Active duty.

Mr. BERGMAN. That's it?

Mr. FLOHR. Yes, sir.

Dr. JOYCE. I would also add that in the testimony of Mr. Flohr so far the increase in number of claims for Gulf War Illness is a demonstrable manifestation that more have been accepted—

Mr. BERGMAN. Great segue, thank you very much, because in the military we—and you have heard this term, in fact General Petraeus coined the term when he looked at changing how we were looking at Operational Iraqi Freedom and he talked about creating the surge, if you will, can you give me an example of surge operations that have been instituted within the VA? Not just asking for more money and more people, but taking already existing assets that you have and that you pay every day of the week, and redistribute those assets in a surge manner to begin to grab a handle on this?

Mr. FLOHR. I don't know if it meets what you are looking for, but we—

Mr. BERGMAN. I am looking for a surge—

Mr. FLOHR [continued]. —over the past several years—

Mr. BERGMAN [continued]. —of existing assets that you are refocus—

Mr. FLOHR. Yes, sir.

Mr. BERGMAN. —based upon a perceived need. Again, in war fighting, it is real simple: if the enemy is over here, bring your stuff over here to go after them.

Mr. FLOHR. What we have done over the last several years now is develop training academies for newly hired employees where they get the training they need to make proper decisions in a group setting, they get tested. It is working out very well for us.

Mr. BERGMAN. Is there a sense of urgency?

Mr. FLOHR. It is urgent that we get them trained, so they can—

Mr. BERGMAN. Is there a sense of urgency?

Mr. FLOHR [continued]. —process claims, yes.

Mr. BERGMAN. You feel a sense. Sensing is a feeling. Someone can write the word "urgent," but unless you sense urgency, that is where I am going with this.

And from the top down, if the leaders and the people in charge do not have a sense of urgency that is not going to filter down into the organization. It doesn't come from the bottom up, it comes from that leadership at the top.

Mr. FLOHR. I believe that Secretary Shulkin definitely has a sense of urgency and he is relaying that down to all of us.

Mr. BERGMAN. It is too bad it took this long to get the Secretary, if you will. Now, I agree with you, Secretary Shulkin does have a sense of urgency. I am trying to reinforce our support for his efforts to develop that sense of urgency throughout the VA.

Here's a question for you and I don't care who answers this. What is the single biggest challenge for us moving forward here? I am going to give you two of my choices: apathy or bureaucratic red tape?

Mr. HARDIE. Mr. Chairman, Anthony from Veterans for Common Sense. I would like to suggest that, again, the biggest challenge is that undiagnosed illness, since 1994, it doesn't work and all the training in the world isn't going to fix it, all the solutions, we can rewrite manuals all day long. It simply doesn't work because these conditions are diagnosed.

I had a veteran this morning who contacted me and said, "I was diagnosed with sleep apnea, it is one of those nine conditions that are listed under sleep disorders, why can't I get this done?" And I explained to him, well, it was diagnosed and therefore doesn't qualify under undiagnosed illness. And he said, "well, that makes no sense." And I said, "That's the point."

Mr. BERGMAN. So is it apathy or is it bureaucratic red tape that is causing that? Anybody want to throw one out there? It's okay, there are no right or wrong answers here. It is what you perceive based upon your understanding and research into this issue.

Mr. FIGLIOLI. Mr. Chairman, Mike from VFW. I would say it is bureaucratic red tape, in my opinion, VFW's opinion, too many steps. The manual, as was said, is clunky, confusing. Training is not conducted in a way that they can recognize either it is or it is not Gulf War Illness and roadblocks abound.

If it was made simpler, if the DBQ was developed to the point that said this is in fact Gulf War Illness, or if we started from Gulf War Illness and worked backwards, it might be less so.

This has actually not been going on since last year, this has actually been going on since 1997, Mr. Chairman.

Mr. BERGMAN. Thank you very much.

Question for Mr. Flohr, probably, and Dr. Joyce. What would be the cost, dollar cost to just presumptively assume that all, all Gulf War veterans had a base level of Gulf War Illness, what would be the cost?

Mr. FLOHR. I would have no idea.

Mr. BERGMAN. Would you take that for the record?

Mr. FLOHR. I could take it to our staff that works on those costs.

Mr. BERGMAN. Good. And I don't care whether it is ten percent, twenty percent, I don't care—

Mr. FLOHR. Are you talking about any disability claim by a Gulf War veteran?

Mr. BERGMAN. Get them into the system, presumptively assume that because they were there, they were exposed.

Now, again, we are product of our own experiences. I am Agent Orange, I am Vietnam. Okay?

Mr. FLOHR. I can tell you that right now Gulf War veterans are service-connected for more than 14 million disabilities.

Mr. BERGMAN. Give me a cost to presumptively assume, if it is on your DD214 that you were there in that specific timeframe. Because when we talk about, number one, what are we providing, what is the cost of providing it, and how quickly are we going to come to some resolution.

Wait time, wait time is not—you know, wait time, as a friend of mine, one of my Vietnam squadron mates told me about a month ago, he is still grieving for the recent loss of his wife to cancer and he is writing a book on our experiences in Vietnam, but his quote he is going to use for all to know, and I think it relates to his grieving for the loss of his spouse, is you think you have time, but you don't.

I would suggest to you that that sense of urgency and thinking about how much time you have, but you really don't, we need more. We need a lot more and we need it sooner, and you can do it with quality, I know you can.

So I have gone over my time and, unless there are any other follow-ups, we are going to proceed here with a closing statement.

First of all, I would like to thank all of the witnesses for participating in the hearing today. The panel is now excused.

And as you heard Chairman Bost and Ranking Members Kuster and Esty say, you know, that our efforts as these Subcommittees on behalf of the veterans are an example of true bipartisan effort that we are all philosophically aligned that it is our job as the Committee to do the right thing for the veterans.

These Subcommittees that we represent here will continue to set the example for our 115th Congress about doing the right thing for those involved. So I am very proud to be a Member of this Committee.

For years this Committee has been working to address the root cause of the high denial rate for Gulf War Illness claims. In that time, we have been met with a list of excuses from VA for failing to improve the process for Gulf War claims.

Last year, we held a hearing to assess the disability claims process for Gulf War veterans and highlighted, just as we have discussed here today, that VA's approval rate for Gulf War Illness claims is less than 20 percent. VA often seems to deny these claims because it demands to know the specific cause of an illness, yet under the law presumptive conditions do not require causality, because they are presumed to have been caused by service in the Gulf War.

The Government Accountability Office report that we have discussed in detail here today further substantiated that the approval rates for Gulf War Illness claims are three times lower than all other claimed disabilities.

The critical point to understand is that veterans cannot receive appropriate VA care for symptoms of Gulf War Illness when the majority of those claims have been denied by the VA. To make matters worse, the reason for claims denials are also not clearly communicated to veterans, we heard that in your testimony—it is not written in English, if you will—or their representatives. Failure to communicate the reason for denials often leaves veterans with confusing or insufficient information for a potential appeal, which further delays access to care and compensation for injuries.

GAO's review of the medical examination process for Gulf War Illness also highlighted that VA's medical staff are not adequately trained to conduct the exam. And we talked about the 90-minute optional course here.

VHA medical examiners informed GAO that it is challenging to conduct Gulf War general medical exams due to the range of symptoms associated with the claims. Although their concerns are legitimate, there is limited evidence to support that VHA has taken the initiative to improve the examination process. Again, that sense of urgency.

GAO reported that, as of February 2017, only ten percent of examiners participated in the optional online training for those examiners. This statistic is troubling, very troubling, because the VBA cannot consistently and accurately provide benefits ratings without a proper exam from VHA.

Furthermore, GAO found that another contributing factor for claims denial was the lack of a single case definition of Gulf War Illness. Establishing such a definition could lead to improvement in diagnosis and treatment of Gulf War Illness.

Over the years, Congress has appropriated millions of dollars for VA research programs and there is still strong resistance against establishing a single case definition for undiagnosed illness related to Gulf War service.

I am also extremely concerned that VA does not have a plan to guide, to review of the existing medical data sets and integrated information from recent and ongoing research to identify areas of future research and establish a single case definition. Again, that sense of urgency when it comes to innovating and really coming together to move forward.

I look forward to continuing to work with VA, Veterans Service Organizations, and other stakeholders to increase Gulf War Illness claims approval rates. Improve the medical examination process, prioritize research related to Gulf War Illness, and ensure the VBA

is providing straightforward information to veterans regarding their benefits decisions.

With that, I now yield to Ranking Member Esty for any closing remarks that you might have.

Ms. ESTY. Thank you, General, and thank you to all of you on the panel.

And I particularly want to thank Mr. Hardie. I know this has been a passion of yours, and you have been a forceful and persistent and, sadly, necessary advocate to put a human face on what I know from my friend Mike Siccea, who has inspired me to introduce a burn pits bill to try to move this along further.

So I in particular want to thank you for your advocacy and I don't think we would be here today if it were not for your efforts. And I am sorry for the reasons that it has brought you here, but I am glad that you are here and I want to thank you.

As a newer Member of this Committee, I am struck by how much we need to learn the hard-earned lessons of Agent Orange and not do what was done then. And I think the level of frustration you are seeing from this panel is a deja vu that this is taking too long and not everybody has got time, nor should they have to wait.

The most important of those lessons is that we have to be determined, we have to work together. The unwieldy and long research process, which again I would agree with my colleague Representative Brownley, the expert on Gulf War Illness, with all due respect, is not the National Academy of Sciences, it should be the VA. Nobody else actually should know—or DoD or working together—nobody else is actually going to know that other than, right here, the people who supervise.

The difficulty medical examiners have understanding the multisymptom health conditions of Gulf War, and these are getting in the way of identifying and quantifying toxic exposures on the front end, and providing timely, fair compensation, services, and most importantly top-quality health care for our Gulf War veterans on the back end. We owe it to them not to let this happen, as we continue to owe it to our Vietnam veterans and the Blue Water veterans who are still trying to find a way to get the care that they need and deserve.

I think it is very clear, and I want to acknowledge and thank the VA for taking steps in a positive direction for veterans who have Gulf War Illness, but it seems to me these steps are too small; they are too incremental, they lack the urgency, and they lack the surge, the surge that we need.

It has been 26 years since the first Gulf War started. Many of the veterans who were deployed are very sick and they have been beaten down by a claims process that is confusing, it is unclear, and in almost every case it seems to deny what they know to be true in their lives. That has undermined their faith in the system as a whole, and they have disconnected and they are discouraged, and that is, quite simply, wrong.

So I want to say for my part, and I suspect I am not the only one on this panel, that if VA doesn't use its authority on its own initiative, Congress will begin to take steps. We will set timeframes, we will mandate training for all examiners, whether they are in the VA or whether they are contract. I think that has to

happen. We will mandate timelines within which we have to have a single definition that everybody can use.

And most importantly, we need to do better. The General and I were talking about this point about cost, which often seems to me to be really the reason behind the red tape. The point should be to care for our veterans and if we are spend so darn much time and expense and people dedicated to making people who are sick prove just how sick they are and how they got so sick, what about just taking care of the people who defended this country. What if we took those same resources that are deployed now on saying no and deployed them to saying yes to those who were deployed in the Gulf?

And I think it is not just an academic exercise to answer the question that the General and I were talking about and he directly asked you, what would be the cost of truly, presumptively saying anyone who served, if you got any of this, we are going to get you better and back on your feet. That is our commitment to you. And not spend our time trying to determine what percentage, where were you exactly.

The point is people served and they need help now. And we should be able to expect, and they should too, that they can get back on their feet and be productive members of society. We shouldn't ask them to prove how disabled they are, we should be helping them to get as abled as they could be.

And I think that is a really serious thing we all need to be thinking about, because I am new to this Committee, but I am not new to hearing from the veterans in my district and the frustration that they feel, and the time and effort that goes into these fine hair distinctions, when instead I would rather see that money going to care for our veterans and get them back on their feet.

So I would ask you all to think seriously about that and ask everyone on this panel if the time hasn't come to rethink, particularly when we are now at a point with a voluntary force. Our veterans are changing and we need to think about changing with them.

Thank you for your service, thank you for working with us. And we look forward to seeing those letters in August and I hope they will be shared with the VSOs, so we can get this better and get this right.

Thank you very much and, with that, Mr. Chairman, General, I yield back.

Mr. BERGMAN. Thanks, Ranking Member Esty.

I ask unanimous consent that all Members have five legislative days to revise and extend their remarks, and include extraneous material.

Without objection, so ordered.

I would like to once again thank, sincere thanks to all of our witnesses and audience members for joining in today's conversation.

With that, this hearing is adjourned.

[Whereupon, at 11:05 a.m., the Subcommittee was adjourned.]

APPENDIX

Prepared Statement of Brad Flohr

Opening Remarks

Chairman Bost, Chairman Bergman, Ranking Members Esty and Kuster, and Members of the Subcommittees, thank you for the opportunity to discuss how the Department of Veterans Affairs (VA) processes Gulf War Veterans' disability compensation claims for undiagnosed illnesses or medically unexplained chronic multi-symptom illnesses. With me today is Dr. Patrick Joyce, Chief, Occupational Health Clinics, Washington VAMC, VHA. My testimony will provide an overview of VA's processing of these claims and our training and quality assurance efforts.

Gulf War Illnesses

Service connection for undiagnosed illnesses or medically unexplained chronic multi-symptom illnesses requires service in the Persian Gulf after August 2, 1990, and a qualifying chronic disability that rises to a compensable level of severity before December 31, 2021. To ensure Veterans who served in the Southwest Asia theater of operations continue to be entitled to benefits under the law, VA recently updated the regulation in 38 Code of Federal Regulations § 3.317 to extend the date for which service connection may be awarded for a qualifying Gulf War illness from December 31, 2016, to December 31, 2021.

A medically unexplained chronic multi-symptom illness means a diagnosed illness without conclusive pathophysiology or etiology. The objective signs and symptoms of these disabilities, as well as undiagnosed illnesses, include fatigue, skin conditions, headaches, muscle pain, joint pain, sleep disturbances, and cardiovascular symptoms, among others. The term "medically unexplained chronic multi-symptom illness" also covers diagnosed illness defined by a cluster of signs or symptoms, such as chronic fatigue syndrome, fibromyalgia, and functional gastrointestinal disorders (excluding structural gastrointestinal diseases).

Processing these types of claims requires a careful review of service treatment records, military personnel records, and post-service treatment records. Claims processors must carefully review the claimed disabilities and symptoms. Medical examinations are generally required where VA identifies these disability patterns to determine whether there is a medical explanation of the disabilities.

Gulf War Claims Processing

In fiscal year (FY) 2016, approximately 18,681 Veterans who served in the Southwest Asia theater of operations received a rating decision for a claim for service connection for undiagnosed illnesses or chronic multi-symptom illnesses. From this number, 4,594 Veterans were awarded service connection for one or more undiagnosed illness or chronic medically unexplained multi-symptom illness. This equates to a grant (or approval) rate of 25 percent. When considering each type of claim, the approval rate for a medically unexplained chronic multi-symptom illness is 31 percent compared to 13 percent for an undiagnosed illness. It should be noted that when a Veteran claims an undiagnosed illness, if upon examination or if the medical evidence shows that symptoms can be attributed to a diagnosed condition, VA will service connect the diagnosed condition whenever possible rather than characterizing the claimed condition as undiagnosed. Therefore, the number of grants for undiagnosed illnesses or chronic multi-symptom illnesses do not reflect the actual number of Veterans service connected for known disabilities resulting from their Gulf War service.

Training

VBA has developed a total of thirteen courses for claims processors that are focused on processing of claims for undiagnosed illnesses or chronic multi-symptom illnesses. Over the last year, VA Central Office mandated, as part of the FY 2017 National Training Curriculum for Rating Veterans Service Representatives, re-

quired training of four interactive lessons (eight hours) and one classroom-based course (two hours) for a total of 10 hours of training. For Veterans Service Representatives, a two-hour required class was mandated as part of the National Training Curriculum. In addition, a new lesson titled, "Southwest Asia/Gulf War Claims Development" is currently being developed and is scheduled to launch in FY 2018.

VA has implemented a number of other initiatives to improve Gulf War claims processing. VBA is making necessary changes to improve the notification process, specifically to require that decision letters indicate that claimed issues were evaluated under both presumptive and direct service-connection methods. This change is scheduled to go into effect by the end of August 2017. VA has developed special tracking to specifically account for Gulf War claims. VA has also amended its Gulf War General Medical Examination template to include information for examiners on undiagnosed and chronic multi-symptom illnesses, as well as information on environmental exposures in the Gulf War.

Quality

The Veterans Benefits Administration (VBA) is constantly looking for ways to improve the service it provides to America's Veterans, including this cohort of Veterans. VBA works with the Veterans Health Administration (VHA) in reviewing the research done by its Offices of Public Health and Research and Development, as well as the National Academy of Medicine's (formerly the Institute of Medicine) biennial update on Gulf War issues. VBA also works with VHA and the Department of Defense in joint workgroups that research occupational and environmental hazards coincident with military service. VBA collaborates with VHA to update training for its medical examiners, as well as VBA's contract medical examiners. Finally, VA continues to collaborate with the National Gulf War Resource Center (NGWRC) in bimonthly meetings.

VBA has a national quality review staff, as well as quality reviewers in its local regional offices, to ensure employees correctly process and decide claims for Gulf War illness. As agreed upon with NGWRC, VA conducted two distinct special-focused reviews of decisions on claims for Gulf War-related illnesses in December 2015 and September 2016. The review in December 2015 focused on FY 2015 Gulf War illness cases and showed a 94-percent accuracy rate. The September 2016 review expanded the review to cases that involved claims for medically unexplained chronic multi-symptom illnesses over a 4-year period starting from FY 2011. This review showed an 89-percent accuracy rate.

Closing Remarks

VA continues to improve the efficient, timely, and accurate processing of disability compensation claims involving service in the Gulf War. Although the science and medical aspects of undiagnosed illnesses and multi-symptom illnesses are complex, VA continues to review scientific evidence and medical literature to gain a better understanding of the impact of these illnesses on our Gulf War Veterans.

This concludes my testimony. I am pleased to address any questions you or other Members of the Subcommittees may have.

Prepared Statement of Melissa Emrey-Arras

ADDITIONAL ACTIONS NEEDED TO IMPROVE VA'S CLAIMS PROCESS

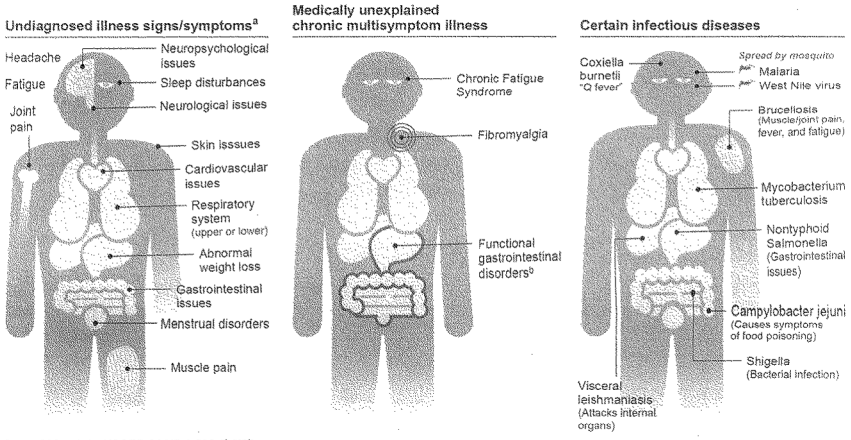
Chairmen Bergman and Bost, Ranking Members Kuster and Esty, and Members of the Subcommittees:

I am pleased to be here today to discuss our recent report on the process the Department of Veterans Affairs (VA) uses to evaluate Gulf War Illness disability compensation claims. VA estimates that among the nearly 700,000 veterans who served in the Persian Gulf War in 1990–1991, about 44 percent experience chronic medical issues commonly referred to as Gulf War Illness. There are no similar VA estimates of the prevalence of Gulf War Illness among veterans who were deployed to the region after 1991. According to the Department of Defense, however, these veterans may have also been exposed to certain environmental hazards and many have developed similar medical issues upon their return. The exact causes of Gulf War Illness are not always known and veterans' symptoms vary widely, but include fatigue, headaches, joint pain, indigestion, insomnia, respiratory disorders, skin problems, and memory impairment, among others. VA refers to claims for Gulf War Illness as "undiagnosed illness," "medically unexplained chronic multisymptom illness," and

"infectious disease" claims. For the purposes of this testimony, we collectively refer to these three types of claims as Gulf War Illness claims (see fig. 1).

Figure 1: Symptoms and Medical Issues the Department of Veterans Affairs (VA) Associates with Gulf War Illness

There are three categories of Gulf War Illness according to Department of Veterans Affairs (VA) regulations:



Source: GAO analysis of 38 C.F.R. § 3.317. | GAO-17-692T

Note: The symptoms of undiagnosed illness and the chronic multisymptom illnesses are examples-not an exhaustive list-of medical issues that VA associates with Gulf War Illness.

(a) The symptoms listed below may be manifestations of either undiagnosed illness or medically unexplained chronic multisymptom illness. For simplicity, these symptoms are listed only once, under the category of undiagnosed illness.

(b) Irritable bowel syndrome is one common type of functional gastrointestinal disorder.

The VA provides disability compensation benefits to veterans with disabling conditions that were incurred or aggravated during active military service.[1] Gulf War Illness claims are different in that VA can award benefits to certain veterans who served in a Gulf War conflict since 1990 and display any of the symptoms listed above without the veteran having to prove the symptoms are related to their military service. VA does require proof, however, of a veteran's service in the Gulf War region and existence of the claimed symptoms. Veterans Benefits Administration (VBA) claims raters review each claim to determine if relevant criteria are met, including verifying the veteran's deployment location; establishing whether the veteran's symptoms have lasted for a minimum of 6 months; and assessing the severity of the veteran's condition.[2] As such, the VBA may request a medical examination from the Veterans Health Administration (VHA) to obtain additional information about the veteran's disability.

From fiscal years 1994 through 2016, VA has funded more than $170 million for Gulf War Illness-related medical research, including $12.3 million in fiscal year 2016. According to the VA and a 2016 National Academy of Medicine report, while much progress has been made in Gulf War Illness research, more work is needed to better understand what Gulf War Illness is and how to treat it.

My remarks today are based on our recent report, entitled Gulf War Illness: Improvements Needed for VA to Better Understand, Process, and Communicate Decisions on Claims.[3] Accordingly, this testimony addresses (1) recent trends in Gulf War Illness disability claims, (2) challenges VA faces with accurately processing and clearly communicating decisions on Gulf War Illness claims, and (3) how VA uses Gulf War Illness research to inform its disability compensation program. In addition, I will highlight several key actions that we recommended in our report that

[1] See 38 U.S.C. §§ 1110 and 1131. This does not include disabilities incurred by a veteran's own willful misconduct or abuse of alcohol or drugs.

[2] The minimum 6 month time period does not apply to claims for certain infectious diseases.

[3] GAO, Gulf War Illness: Improvements Needed for VA to Better Understand, Process, and Communicate Decisions on Claims, GAO 17 511 (Washington, D.C.: June 29, 2017).

VA can take to help address challenges with its Gulf War Illness disability claims process.

For our report, we analyzed VBA data on disability compensation claims completed during fiscal years 2010 through 2015 and reviewed a non-generalizable sample of 44 Gulf War Illness claims that were completed in fiscal year 2015.[4] We also visited 4 of VBA's 58 regional offices (selected for high numbers of Gulf War Illness claims completed in fiscal year 2015 and geographic dispersion) and nearby VHA health care facilities where medical examinations take place.[5] Throughout our work, we interviewed staff from VA headquarters and the 4 regional offices we visited, as well as representatives from several veterans advocacy groups. We also reviewed relevant federal laws and regulations related to disability compensation benefits for Gulf War Illness. Additional information on our scope and methodology is available in our full report. We conducted the work on which this testimony is based in accordance with generally accepted government auditing standards.

In Recent Years, Completed Gulf War Illness Claims Have Risen, Included More Medical Issues, and Been Approved at Lower Rates Than Other Service-related Disabilities

According to our analysis of VBA data, the number of Gulf War Illness claims has substantially increased in recent years and these claims often include multiple medical issues, which generally require more time to process. Specifically, in fiscal year 2015, VBA completed about 11,400 Gulf War Illness claims, which was more than double the 4,800 claims for Gulf War Illness it completed in fiscal year 2010.[6] Many of these claims included multiple medical issues-or, symptoms-related to Gulf War Illness.[7] On average, we found that Gulf War Illness claims had about twice as many medical issues per claim as other disability claims, and took 4 months longer to complete.

We also found that Gulf War Illness claims were approved at lower rates than other types of disability claims. During fiscal years 2010 through 2015, we found that approval rates for Gulf War Illness medical issues were about three times lower than for all other claimed disabilities-17 percent of Gulf War Illness medical issues were approved over the 6-year time period we reviewed in comparison to 57 percent of all other types of medical issues.[8] According to VA, several factors may contribute to lower approval rates for Gulf War Illness medical issues including that these claims are not always well understood by VA staff. Additionally, according to some VA staff we spoke with, veterans sometimes file for Gulf War Illness disability benefits but do not provide sufficient evidence that their symptoms have existed for at least 6 months, as generally required by VA regulations.

Accurate Processing of Gulf War Illness Claims Is Hampered by Confusion about the Gulf War General Medical Exam, and Claim Decision Letters Lack Key Information

VBA has clarified its guidance and implemented additional training for its claims rating staff, but the agency's ability to accurately process Gulf War Illness claims is hampered by inadequate training for VHA medical examiners who conduct medical examinations. VBA claims rating staff often rely on medical examiners to assess a veteran's disability before they make a decision on a claim. Medical examiners we interviewed said that conducting Gulf War general medical exams is challenging because of the range of symptoms that could qualify as Gulf War Illness. The VHA has offered an elective 90 minute web-based Gulf War Illness training for its medical examiners since June 2015. According to a VHA official, as of February 2017, VHA training data show only 10 percent of examiners had taken this training. Federal internal control standards call for adequate training for staff so that they can correctly carry out an agency's procedures. Medical examiners who do not take this Gulf War Illness-specific training may not be able to provide information to VBA staff to correctly decide whether to grant or deny a veteran's claim. To help ensure

[4] We determined these data were sufficiently reliable for the purposes of our reporting objectives and have noted in our full report any limitations that are associated with the data we present on trends in Gulf War Illness claims.

[5] We visited the Cleveland, Ohio; Seattle, Washington; St. Petersburg, Florida; and Waco, Texas regional offices and nearby VHA clinics.

[6] VBA completed processing over 42,000 Gulf War Illness claims during the 6 year time period we reviewed.

[7] A medical issue is an illness or condition that a veteran alleges was caused or worsened by their military service and may entitle the veteran to disability benefits. A veteran may file multiple claims with VA, and each claim may include multiple medical issues.

[8] VBA makes a separate determination on each medical issue submitted by the veteran and, therefore, we analyzed approval rates for Gulf War Illness claims at the medical issue level.

that medical examiners are well prepared to conduct Gulf War Illness medical examinations, we recommended that VA require its medical examiners to complete training, such as the 90-minute web-based course developed by VHA, prior to conducting Gulf War Illness medical examinations. VA agreed with this recommendation and plans to require that all its medical examiners take the 90-minute training course.

We also found that decision letters VA sends to veterans denying benefits for Gulf War Illness claims do not always clearly explain to the veteran how their Gulf War Illness claim was decided, which can leave a veteran uncertain about how the claim was evaluated and potentially lead to unnecessary appeals. VA regulations require that a clear statement be provided to the veteran regarding the agency's decision on each claim.[9] Without VBA including clear language in its decision letters, veterans may be unable to make a fully informed decision on whether to appeal VBA's decision. To improve communication with and provide more complete information to veterans whose Gulf War Illness claims are denied, we recommended that VA require decision letters for Gulf War Illness claims to clearly explain how the claim was evaluated. VA agreed with our recommendation and is in the process of updating its guidance to the regional offices to clarify the language required for its Gulf War Illness decision letters.

VA Considers Research When Identifying Additional Disabilities Related to Gulf War Service, but Lacks a Plan to Guide Its Work on A Key Research Goal

VA considers research findings when adding to the list of conditions it presumes are associated with Gulf War service for disability compensation purposes, but it does not have a plan to develop a uniformly used case definition of Gulf War Illness. Based on research evidence, in 2010, VA added nine infectious diseases to the list of recognized Gulf War Illness-related conditions in its regulations.[10] Since then, VA has not identified any new conditions that it associates with Gulf War service, but agency officials say that they continue to explore whether additional conditions should be added.

Despite the progress made by VA's Gulf War Illness research program, VA advisory groups have noted the lack of a single case definition that can be uniformly used to study Gulf War Illness, and emphasized that establishing a single definition could further improve the research, clinical diagnosis, and treatment of veterans with Gulf War Illness. VA's advisory groups recommended that in the near-term, the agency analyze data from its existing datasets to better understand how they can be used to contribute to a single case definition. For example, VA has access to dozens of existing large-population datasets from federally-sponsored research studies and data contained in several federal Gulf War registries that include veterans' health information. According to VA, if these data were merged with its administrative datasets (for example, those containing clinical and benefits data), the information could be leveraged by VA researchers to improve understanding of Gulf War Illness and, ultimately, contribute to the development of a single case definition. Merging these datasets could provide researchers with additional information needed to develop a case definition, including information on veterans' service and onset of their symptoms. In addition, VA's research advisory groups also noted the need for VA to plan for future research that is likely to contribute to a single case definition in the long-term.

VA included in its 2015 Gulf War Research Strategic Plan a strategic objective to establish a single case definition, but according to a VA official, the agency has no action plan in place to achieve it. Federal internal control standards call for agencies to have documented plans that include specific action steps associated with their objectives. VHA officials told us that they are considering how to use existing federal datasets and ongoing research to better understand Gulf War Illness but have not laid out specific actions, such as what data to use and how using these data would contribute to the development of a single case definition. VA officials attributed the lack of a specific plan to challenges with developing a single case definition and noted that it must be a slow and deliberate process. However, without a

[9] 38 C.F.R. § 3.103(b).

[10] Presumptions of Service Connection for Persian Gulf Service, 75 Fed. Reg. 59,968 (Sept. 29, 2010). In 1998, legislation was enacted that required VA to seek to enter into an agreement with the National Academy of Sciences to study Gulf War Illness related topics. See Pub. L. No. 105–277, § 1603, 112 Stat. 2681, 2681–745 (1998). VA relied on findings from one of these studies when determining that it should provide disability compensation to Gulf War veterans who have these nine infectious diseases.

plan, VA risks engaging in research activities that are not cohesively targeted toward its goal of establishing a single case definition.

To increase the likelihood of making progress toward developing a single case definition of Gulf War Illness, we recommended that VA prepare and document a plan to develop such a definition, including near- and long-term goals and specific actions needed to meet those goals. In response, VA agreed with this recommendation and will convene a group of subject matter experts to work on a plan.

Chairmen Bergman and Bost, Ranking Members Kuster and Esty, and Members of the Subcommittees, this concludes my prepared statement. I would be pleased to respond to any questions you or other Members of the Subcommittees may have.

GAO Contact and Staff Acknowledgments

If you or your staff members have any questions concerning this testimony, please contact me at (617) 788–0534 or emreyarrasm@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement. Individuals making key contributions to this testimony include Nyree Ryder Tee (Assistant Director), Nora Boretti (Analyst-in-Charge), David Barish, Deborah K. Bland, Alexander G. Galuten, Marcia A. Mann, Martin E. Scire, Walter K. Vance, and Kathleen L. van Gelder. Other staff who made contributions to the full report cited in this testimony are identified in the source product.

This is a work of the U.S. government and is not subject to copyright protection in the United States. The published product may be reproduced and distributed in its entirety without further permission from GAO. However, because this work may contain copyrighted images or other material, permission from the copyright holder may be necessary if you wish to reproduce this material separately.

GAO's Mission

The Government Accountability Office, the audit, evaluation, and investigative arm of Congress, exists to support Congress in meeting its constitutional responsibilities and to help improve the performance and accountability of the federal government for the American people. GAO examines the use of public funds; evaluates federal programs and policies; and provides analyses, recommendations, and other assistance to help Congress make informed oversight, policy, and funding decisions. GAO's commitment to good government is reflected in its core values of accountability, integrity, and reliability.

Obtaining Copies of GAO Reports and Testimony

The fastest and easiest way to obtain copies of GAO documents at no cost is through GAO's website (http://www.gao.gov). Each weekday afternoon, GAO posts on its website newly released reports, testimony, and correspondence. To have GAO e mail you a list of newly posted products, go to http://www.gao.gov and select "E-mail Updates."

Order by Phone

The price of each GAO publication reflects GAO's actual cost of production and distribution and depends on the number of pages in the publication and whether the publication is printed in color or black and white. Pricing and ordering information is posted on GAO's website, http://www.gao.gov/ordering.htm.

Place orders by calling (202) 512–6000, toll free (866) 801–7077, or TDD (202) 512–2537.

Orders may be paid for using American Express, Discover Card, MasterCard, Visa, check, or money order. Call for additional information.

Connect with GAO

Connect with GAO on Facebook, Flickr, LinkedIn, Twitter, and YouTube.
Subscribe to our RSS Feeds or E-mail Updates. Listen to our Podcasts.
Visit GAO on the web at www.gao.gov and read The Watchblog.

To Report Fraud, Waste, and Abuse in Federal Programs

Contact: Website: http://www.gao.gov/fraudnet/fraudnet.htm
E-mail: fraudnet@gao.gov
Automated answering system: (800) 424–5454 or (202) 512–7470

Congressional Relations

Katherine Siggerud, Managing Director, siggerudk@gao.gov, (202) 512–4400, U.S. Government Accountability Office, 441 G Street NW, Room 7125, Washington, DC 20548

Public Affairs

Chuck Young, Managing Director, youngc1@gao.gov, (202) 512–4800
U.S. Government Accountability Office, 441 G Street NW, Room 7149, Washington, DC 20548

Strategic Planning and External Liaison

James-Christian Blockwood, Managing Director, spel@gao.gov, (202) 512–4707
U.S. Government Accountability Office, 441 G Street NW, Room 7814, Washington, DC 20548

Prepared Statement of Zachary Hearn

In March 2016, The American Legion testified before a joint hearing of the Subcommittees on Oversight and Investigation, and Disability Assistance and Memorial Affairs to discuss the adjudication of Gulf War Illness claims for veterans that served in the Persian Gulf since August 2, 1990.

These veterans are prideful based on their honorable service, but many remain frustrated due to their chronic and unexplained illnesses. They defeated an aggressor, liberated a nation, and defended American interests, but for some the cost of this service to our nation has resulted in many veterans suffering with debilitating symptoms since returning from the Persian Gulf. The specific etiology of the conditions are mysterious, and the granting of presumptive claims related to Persian Gulf service remains a painfully long process that could result in years of appeals before receiving the positive adjudication they have earned.

Chairmen Bergman, Bost, Ranking Members Kuster, Esty, and distinguished members of the Subcommittees on Oversight and Investigations, and Disability Assistance and Memorial Affairs; on behalf of National Commander Charles E. Schmidt and The American Legion, the country's largest patriotic wartime service organization for veterans, comprising over 2 million members and serving every man and woman who has worn the uniform for this country; thank you for the opportunity to testify regarding The American Legion's position on ″Examining VA's Processing of Gulf War Illness Claims″.

Background

The Department of Veterans Affairs (VA) currently identifies numerous medical conditions or symptoms that are presumptively related to Gulf War service. Presumptively awarding service connection for conditions due to environmental exposures is not a new concept for VA. Conditions such as diabetes, ischemic heart disease, and a variety of cancers are presumptively related to herbicide exposure in Vietnam. Additionally, veterans of radiation testing have had multiple conditions presumptively ascribed to radiation exposure in service.

For Persian Gulf veterans, they face a unique set of challenges in their quest to gain benefits derived from their military service. Unlike herbicide and radiation exposed veterans, many Persian Gulf veterans must prove they suffer from symptoms, or clusters of symptoms, and endure years of medical tests to indicate that they suffer from an undiagnosed illness.

″Undiagnosed illness″ is a frustrating explanation to a complicated medical situation. Numerous medical studies have revealed that veterans who returned from Persian Gulf service face serious health concerns following their deployments. However, a generation removed from Operations Desert Shield and Desert Storm, the medical community is still uncertain of how to properly diagnose or treat these veterans resulting in VA routinely denying disability compensation to veterans seeking service connection for Gulf War related conditions.

Due to the ambiguity in the application of presumptive conditions associated with Persian Gulf service and the uncertainty within the medical community, veterans have become increasingly frustrated while trying to get their claims properly adjudicated. A common problem The American Legion finds is that veterans who seek a claim for benefits; and because of the complexity of Gulf War Illness (GWI); find that the diagnosis may have changed multiple times. VA raters are not medical specialists and are often unaware and unable to detect that the rapidly changing diagnosis is essentially the same condition. Moreover, the situation is further complicated by the fact that if one medical professional renders a diagnosis, by definition it is no longer an undiagnosed illness; even if the veteran received a multitude of differing diagnoses related to the same symptoms; and is therefore no longer undiagnosed according to VA raters.

The American Legion has over 3,000 accredited representatives located throughout the nation. Through their dedicated efforts, The American Legion represented over 800,000 veterans in Fiscal Year 2016. We are fortunate to have trained professional service officers in each of VA's 56 regional offices (VAROs) and were able to refer to our national network of service office in March 2016, while testifying about Gulf War Illness claims. Some of the veterans' experienced the following road blocks while seeking service connection ratings:

- Medical professionals hesitate to connect conditions to Persian Gulf service;
- Some veterans have elected not to pursue benefits because a perception exists that there is more desire to service connect veterans with service in Vietnam;
- Medical professionals will assign symptoms to aging; and
- Medical professionals suggest the veteran is malingering, stating they are too young for the symptoms.

According to American Legion's Department Service Officers (DSOs), little if anything has changed regarding the development and adjudication of claims in more than a year since the March 2016 hearing. Many DSOs report limited GWI research combined with adjudicators' denial of claims have led to many appeals that result in years of waiting and increased anguish for veterans and their families.

The American Legion's concerns were confirmed in the recently released Government Accountability Office (GAO) report[1]. GAO concurs with years of complaints from veterans and veterans service organizations (VSOs) regarding the treatment, development, and adjudication of Gulf War Illness claims. GAO's report provides insight into VA's lack of providing training to medical staff and VARO employees. VA's lack of training has resulted in various interpretations of guidance provided by VA Central Office resulting in vastly different outcomes for veterans. Furthermore, GAO concludes that VA's lack of clarity in its decision letters pertaining to Gulf War Illness claims leads to more questions than answers.

Many DSOs and veterans have discovered they may fare better if they ultimately appeal Gulf War related conditions to the Board of Veterans' Appeals (BVA). One DSO stated that he encourages veterans to submit lay statements from friends and family members detailing the symptoms the veteran has experienced to bolster the claim. He also states that a VA rater will likely ignore the lay statement that may detail the chronic symptoms; however, BVA veterans' law judges will take the lay statements into consideration when rendering a decision.

Each year The American Legion visits VAROs to review recently adjudicated claims and meet with VA employees. It is not uncommon to hear VA employees tell us that BVA has greater latitude than VA raters in adjudicating claims. It was concerning when we heard these statements from raters and decision review officers (DROs), and it was alarming when we heard it from a veterans' service center manager, and it was stunning when we heard last year from a senior official within the Veterans Benefits Administration (VBA) that the BVA has greater authority. When asked to clarify the statement and cite a regulation or statute, the official simply stated, ″They just do″, when in fact - they do NOT. The VA and the Board both adjudicate from the same statute.

Based on this common misconception The American Legion contacted VA's Office of General Counsel (OGC) for input. OGC agrees with The American Legion that no greater authority is given to a BVA judge than a VA rater or DRO adding, ″It is not accurate to say that the Board has greater authority than the (VARO) to grant benefits, or any authority at all to circumvent the law and award benefits at will.″ In short, a rater has the ability to grant the same claim as the BVA judge.

VBA has routinely stated that BVA's combined 75 percent grant and remand rate for all appeals is due largely to the submission of additional evidence or the passage of time. There is some truth to that statement - however when considering that at least one senior official at VA Central Office stated that the BVA has greater authority, and numerous individuals at VAROs employed in management, as well as front line employee concur with that belief - VBA must own its routine inadequate development and premature denial of claims.

OGC's response to why the perception may exist that BVA has greater latitude sheds light on one of the issues that hamper VBA - its own manual. According to OGC, ″One provision that may further misconception is 38 C.F.R. § 19.5 which provides that the Board is not bound by Department manuals, circulars, or similar administrative issues.″ VBA's manual was designed to provide ″procedures for the adjudication of claims for compensation, pension, dependency and indemnity com-

[1] Gulf War Illness: Improvements Needed for VA to Better Understand, Process, and Communicate Decisions on Claims, GAO, June 2017

pensation, accrued benefits and burial allowance."[2] Considering the routinely different outcomes between VBA and BVA decisions, it stands to reason that VBA needs to reconsider the manual and its use of the document.

The use of lay statements in VBA decisions by VBA raters has become far less common. One reason for this is VA's implementation of its "Evaluation Builder" within the Veterans Benefits Management System. The Evaluation Builder tool was designed to provide uniform outcomes in decisions regardless of adjudicator. Discussions with line employees and VARO management at numerous offices have concluded that lay statements cannot be taken into account within the tool. This is further complicated by the fact that if a rater overrides the suggested decision, the quality review team (QRT) is notified and a review of the decision is initiated by QRT. Many employees report they will adjudicate in accordance with the Evaluation Builder tool's suggestion in order to avoid a QRT review. This lack of use of lay statements omits significant evidence, severely disadvantages veterans who submit this evidence, and causes significant harm to veterans who are denied benefits because raters refuse to consider all legal evidence. As an example, statements that support a continuity of symptoms could be evidence toward receiving a grant of benefits, or photographs would support the existence of an undocumented temporary duty assignment that wasn't properly documented in the veteran's official military record. It is absolutely critical that all levels of the VBA adjudication process fully support the use of lay statements, and The American Legion calls on VA to immediately cease the practice of largely ignoring this type of important legal evidence.

The American Legion finds that training continues to be an issue at VBA. One of our DSOs tells us that according to a VARO employee "VBA employees receive less (GWI) training than (VSOs)." The employee further states that any training received has been through VA's Talent Management System (TMS) web-based training, and that TMS training is not typically treated with the same level of focus as classroom training which has led to frustration with GWI claims.

DSOs also question the level of training that medical providers are receiving regarding Gulf War Illness claims and question if minimal, or if any training at all is being provided. VBA's expansion of contract compensation and pension exams is also raising concerns. Contractors may be hired with little to no training regarding GWI which will result in negative nexus statements and an ultimate denial by VBA.

The American Legion understands and appreciates the challenges VA faces regarding GWI. Unlike Agent Orange related claims or radiation exposure claims, a decision has to be rendered on an undiagnosed illness creating an inherent ambiguity. The American Legion suggested changes to Disability Benefits Questionnaires (DBQs) in March 2016 which have not been adopted. DBQs are a standardized form used by medical providers to evaluate the level of disabilities suffered by veterans; both VA and private sector medical professionals have the ability to access these forms.

As previously stated, many veterans are denied compensation benefits for Persian Gulf related conditions upon receiving a diagnosis, even if the diagnosis changes over the course of months or years. This lack of access to benefits can result in unequal and extraordinary hardship to veterans and their family members - all while their health continues to deteriorate. The American Legion calls on VA to identify veterans with Persian Gulf service and allow medical professionals to opine on DBQs if the sought medical conditions could at least as likely as not be related to Persian Gulf service despite having a diagnosis. This would provide the necessary path for medical providers, VA, and most importantly, our veterans, to finally receive their VA disability compensation. Through this additional language examiners and VA would have the necessary latitude to provide proper benefits.

The American Legion calls on this Committee to have ongoing roundtables regarding GWI between Congress, VA, and VSOs so that we can improve the delivery of benefits for those suffering GWI. The appeals modernization effort that began in 2016 is proof that when we collaborate on a common problem, we can arrive at a successful solution.

The American Legion has been concerned about the effects of environmental exposure on our servicemembers, and the resulting health effects years following service for more than 20 years. During The American Legion's 98th National Convention, we called upon "the scientific community to focus its efforts on the most likely causes of Gulf War veterans' illnesses" and for VA to "closely monitor the implementation of changes to title 38, United States Code, section 1117, to ensure proper application of the law at the Department of Veterans Affairs regional office(s)",

[2] VBA M21-1 Adjudication Procedures

through passage of American Legion Resolution 122.[3] Additionally, the resolution states The American Legion supports a ″liberalization of the rules relating to the evaluation of studies involving exposure to any environmental hazard and that all necessary action be taken by the federal government, both administratively and legislatively as appropriate, to ensure that veterans are properly compensated for diseases and other disabilities scientifically associated with a particular exposure.″

Conclusion:

The American Legion appreciates the level of difficulty associated with claims pertaining to Persian Gulf service; however, veterans have now suffered for a quarter of a century. VA's continuous reliance on the medical community to discover the etiology for a syndrome they have yet to define has cost too many veterans years of disability compensation. We call for an immediate liberalization in the way Gulf War claims are adjudicated so as to provide an opportunity for our Gulf War veterans to finally receive the benefits they have earned through their honorable service. The American Legion thanks this committee for their diligence and commitment to our nation's veterans on this topic. Questions concerning this testimony can be directed to Derek Fronabarger Deputy Director in The American Legion Legislative Division (202) 861-2700.

Prepared Statement of Michael Figlioli

Chairmen Bost and Bergman, Ranking Members Esty and Kuster and members of the Subcommittees, on behalf of the men and women of the Veterans of Foreign Wars of the United States (VFW) and its Auxiliary, I would like to thank you for the opportunity to testify on the Department of Veterans Affairs (VA) disability claims process with respect to Gulf War Illness.

As professionally trained, accredited advocates, VFW service officers work extraordinarily hard to ensure our veterans and their families receive the maximum benefit allowable by law from the VA. All too often, however, this does not happen for a myriad of reasons and contributing factors. In relation to the topic of today's hearing, I refer to a signature condition of the Persian Gulf War referred to largely across the veterans' community as Gulf War Illness (GWI) or more commonly in VA, as "Medically Unexplained Chronic Multisymptom Illness."

Unlike nearly all other claimed conditions, Gulf War Illness is intrinsically difficult to diagnose and treat. GWI has no clear and concise set of rules. In other words, no one distinctive set of symptoms that allow for a single, unmistakable diagnosis. Gulf War Illness presents itself as a conglomeration of possible symptoms to which countless members of the general public with no military experience can also be subject. As such, Persian Gulf veterans have a steeper hill to climb in relating the symptoms to service—the most critical link in establishing service- connection.

None of this is remotely possible without the benefit of a VA examination (VAE), either at a VA medical facility or with a VA contracted provider. As VA continues to evolve on a number of fronts, mostly with regard to the transition to electronic filing and continued concentration on managing the current claims inventory, VA developed the Disability Benefits Questionnaire (DBQ) with an eye towards efficiency and timeliness.

Last year, the VFW strongly advocated for the elimination of the parsing out of symptoms and placing greater concentration on the clustering of these indicators of potentially one illness affecting multiple body symptoms, as opposed to specific conditions related to each symptom. Put more simply, the VFW feels GWI claimants would be better served by VA eliminating the assignment of multiple DBQs for seemingly unrelated symptoms upon the receipt of a diagnosis, and posit from the outset that the evidence meets the criteria for Gulf War Illness, as opposed to its current form of considering the possibility as a last resort. It was and remains our contention that the current system of assigning separate DBQs for each symptom being claimed in association with GWI promotes the potential for incorrectly assigning a diagnosis to a condition linked to GWI. Thus, either improperly or inadvertently negating the requirements of section 3.317 of title 38, Code of Federal Regulation (CFR), which ultimately results in the veteran's claim being denied.

Regrettably, in the 479 days since these distinguished committees last met to discuss this topic and pressed VA to develop a single DBQ for GWI that would assist in empirically establishing service-connection, VA's Office of Disability Assistance,

[3] The American Legion Resolution No. 122 (Aug. 2016): Gulf War Illnesses

has not reported any progress in the development of a single Gulf War Illness DBQ as Congress suggested, and veterans suffering from these chronic conditions that may give the appearance of a confirmed etiology continue to have their claims denied. VA continues to rely on a "Gulf War Illness General Medical DBQ" that is not singular in nature for claims of GWI, but instead rely on the subjective, non-medically trained construal of a claims assistant to interpret a veteran's claimed conditions and schedule the appropriate VA examinations. When asked about the possibility of the creation of a more favorable DBQ, the response of record was that "VA would look into the issue" and "First, we have to confirm that [lack of a single DBQ] is a real problem." However, every Veterans Service Organization sitting at this table has offered data, verifiable stories, and written statements as to that very point, yet the problems in rating these claims continue.

Beyond the VFW's continued concern with the illogical requirements of service-connection for Gulf War Illness, is the downstream effect of the appellate process. VFW advocates who represent those whose claims were denied continue to recognize the numerous inconsistencies when decisions from the Board of Veterans Appeals (BVA) are remanded to the VA Regional Office. In assessing pending appeals for GWI, the VFW professional staff at the BVA notes that VA appears to clearly favor finding a diagnosis for each reported system and, thereby, rule out GWI, rather than further developing and accurately applying the rating schedule to a diagnosis that is even a minimally supported one. The VFW urges VA to consider both possibilities as existential. Since the preponderance of evidence shows the possibility that GWI may exist, the balance of evidence as to GWI's nonexistence is equal or in "equipoise." Therefore, in accordance with section 3.102 of title 38, CFR, there exists enough "Reasonable Doubt" that VA should develop the claim for the potential grant of Gulf War Illness disability.

The VFW suggested in prior testimony that inconsistencies in the application of the rating schedule is universal across the VA Regional Office spectrum with regard to claims for Gulf War Illness disabilities. While we are not in any way suggesting that this is deliberate, we continue to put forward that a grant for Gulf War Illness in Maine should be exactly the same in Ohio, Iowa, or any other VA Regional Office based on the same evidence and fact pattern. VA's Office of Performance Analysis and Integrity has demonstrated their capability to track data nearly to the key stroke. This presents the perfect opportunity to identify and develop best practices across the Veterans Benefits Administration in properly adjudicating claims for GWI and eliminate the disparities that currently exist. At the very least, now that the National Work Queue (NWQ) is in effect, VA could easily distribute these "specialized" claims to the regional offices that have a proven track record in proper application of section 3.317 of title 38, CFR, with an eye toward the centralization of Gulf War Illness claims as is the case with claims for exposure to toxic water at Camp Lejeune, Lewisite, Spina Bifida and other "non-routine" issues.

Over the past six years, much of VA's effort has been focused on the backlog of existing claims. In the attempt to reduce this inventory as efficiently and expeditiously as possible, VA has relied exceedingly further on the use of contract examiners to meet demand and relieve the burden from the Veterans Health Administration (VHA). While this has allowed VHA to direct resources to provide health care to those already service-connected or otherwise enrolled in the VA health care system, far too often we are alerted to contract exams that are hastily conducted, not performed to VA standard (not compliant with the DBQ required to evaluate the disability), or not properly scheduled. For this reason, the VFW believes that developing a single DBQ intended specifically for identifying and rating Gulf War Illness and accurate, continuous training on how to complete these exams will result in the proper application of the law and the veteran receiving the appropriately awarded benefit their service has earned.

As one of the nation's largest VSOs responsible for providing direct assistance to veterans seeking their earned benefits, the VFW continues to urge Congress to employ its oversight authority regarding the development of a single use DBQ for Gulf War Illness, proper training for VA examiners and claims adjudicators, and the consideration of centralizing these claims through the NWQ to ensure consistency.

Messrs. Chairmen, this concludes my testimony. I will be happy to answer any questions you or the Subcommittee members may have.

Prepared Statement of Anthony Hardie

Thank you, Chairmen Bergman and Bost, Ranking Members Kuster and Esty, and Members of the Subcommittees for today's hearing and for the invitation to speak with you today.

I'm Anthony Hardie, National Board Chair and Director of Veterans for Common Sense (VCS), and a U.S. Army veteran of the 1991 Gulf War and Somalia. VCS and I have provided testimony on many previous occasions, most recently in February and March 2016 for Gulf War health and benefits hearings.

Today's hearing is focused on the latest Government Accountability (GAO) report related to Gulf War Illness (GWI) issues, with bottom line finding of an 87 percent overall denial rate that is three times worse than any other type of claim the Veterans Benefits Administration (VBA) adjudicates. However, the GAO report delves deeper into these GWI claims issues and their intertwined relationship with medical research.

These serious issues have profound real-world impact on Gulf War veterans. Please see Exhibit 1, attached to this testimony, that provides a number of Gulf War veterans' accounts of how their own VA claims for GWI issues were denied. The negative impact on these veterans compels us today to seek to find solutions to favorably impact them and help to relieve their suffering however we can.

2017 GAO REPORT ON GWI CLAIMS

Specifically for Gulf War Illness (Chronic Multisymptom (CMI) and Undiagnosed Illness (UDX)) claims, this new 2017 GAO report [1] found:

- **TRIPLE THE DENIAL RATE:** ".the approval rate for Gulf War Illness medical issues was 17 percent (about 18,000 of 102,00 issues rated), which was about 3 times lower than all other medical issues at 57 percent (about 14 million of 24.7 million issues rated).."; "This approval rate was consistently lower than that of the non-Gulf War Illness medical issues." (p. 18)
- **WORSE FOR UDX CLAIMS:** ".eight VBA regional offices had approval rates of 5 percent or less for undiagnosed illness medical issues." (p. 22)
- **WORSENING OVER TIME:** "Approval rates . decreased from fiscal year 2010 to fiscal year 2015." (p. 18)
- **VA UNDERREPORTED GWI CLAIMS:** ".the number of completed [GWI] claims . may be underreported due to unclear guidance and inconsistent data entry over time by VBA's claim rating staff."; ".staff had not been consistently identifying these medical issues as Gulf War Illness-related."; "[GAO] tested the data to determine the potential magnitude of the underreporting [of GWI issues]. and found approximately 57,000."; "The number of veterans associated with claims for these medical issues was about 41,000."; ".VBA is not planning to correct these data from prior years." (pp. 15–16)
- **GWI CLAIMS TAKE 50% LONGER:** ".[GWI] claims took about 4 months longer for VBA to complete than all other types of claims, averaging about 1 year compared to about 8 months." (p. 17); And, ".[GWI] claims with eight or more medical issues took on average 1 month longer to complete than Gulf War Illness claims with seven or fewer medical issue." (p. 17, footnote). This means veterans who are the worst off have to wait the longest for the help they need.
- **DECISION LETTERS ARE FLAWED:** ".decision letters for denied claims do not communicate key information to veterans", including, "why the claim was denied" (p. ii), and, ".could lead the veteran to conclude that their claim was denied because . VBA had not considered it under the presumptive method of service connection." (pp. 24–25). This is despite a 2002 GAO report (GAO–02–395) that noted that "unclear decision letters can confuse claimants." (p. 25, footnote).
- **NO CONSISTENCY BETWEEN EXAMINERS:** "Medical examiners have different views on and approaches for how to assess veterans for undiagnosed illnesses, in part, because of the challenge of identifying something as an undiagnosed or unexplainable illness." (p. 22)
- **UDX IS UNWORKABLE:** "Medical examiners at one clinic told us that they could nearly always attribute a veteran's symptoms to a diagnosable illness, which would mean the veteran does not qualify for benefits under the undiagnosed illness presumptive category."; ".two examiners said that to determine that a veteran should be categorized as having an undiagnosed illness, they would have to rule out all known diseases that could cause the veterans

[1] U.S. Government Accountability Office, "Gulf War Illness: Improvements Needed for VA to Better Understand, Process, and Communicate Decisions on Claims" (GAO–17–511), June 2017.

symptoms. Doing so, however, is beyond the scope of a medical exam for disability compensation purposes." (p. 22)

- **INADEQUATE TRAINING IMPEDES ACCURACY:** "VA's ability to accurately process GWI claims is hampered by inadequate training"; "VA has developed elective GWI training for its medical examiners, but only 10 percent of examiners had taken the training as of February 2017" (p. ii), an ".optional 90-minute web-based training course." (pp. 22–23). By contrast, ".they must complete training courses before performing certain specialty medical exams, such as for traumatic brain injury or post-traumatic stress disorder." (p. 23)
- **EXAMINERS' ERRORS MAY RESULT IN CLAIM DENIAL:** ".VHA medical examiners sometimes provide a medical opinion related to service connection when one is not necessary because the veteran has a presumptive condition.. This opinion may include language that indicates the veteran's presumptive condition may not be relate to their service."; ".if VBA claim raters do not recognize that the medical examiner has provided an unnecessary medical opinion about service connection for a presumptive condition, they may inadvertently deny a claim that should be presumptively granted." (p. 22)
- **WITH AN 87% DENIAL RATE, TRAINING ISN'T THE ONLY ISSUE:** This is evidenced by the finding that ".98 percent of VBA's rating staff had completed . training." Despite this level of training, VA still denies GWI claims at extraordinary rates. (p. 21, footnote)
- **NO CONSISTENCY BETWEEN REGIONAL OFFICES:** "VBA provides guidance to its claims staff regarding when to request this medical exam; however, we found different interpretations of the guidance among staff in the four regional offices we visited." (p. 20)
- **VA STAFF DON'T UNDERSTAND GWI:** "These Gulf War Illness medical issues may be denied at a higher rate, in part, because according to VA officials, Gulf War Illness is not always well understood by VA staff.." (p. 19)
- **NO GWI CASE DEFINITION, NO ACTION PLAN TO DEVELOP ONE:** "The National Academy of Medicine and VA's Research Advisory Committee on Gulf War Veterans' Illnesses both recognize that establishing a single case definition has been challenging and noted the risks of adopting one that is either too narrow or too broad. Nevertheless, they both identified steps VA can take toward this goal." (p. 30, footnote). "In its 2015 Gulf War Research Strategic Plan, VA included an objective to develop a single case definition, but an official told GAO that VA had no action plan in place to achieve it." (p. ii); ".the persistent lack of a single case definition for Gulf War Illness contributes to many of the current challenges with the Gulf War Illness disability compensation program." . "Without a documented plan to establish a single case definition, VA may miss opportunities to focus its efforts and advance knowledge about Gulf War Illness, and potentially improve the lives of hundreds of thousands of affected veterans." (p. 32)
- **NO VA REPORTING:** "According to VBA officials, VA does not publicly report on the total number of Gulf War veterans who receive disability compensation benefits for Gulf War Illness." (p. 1)
- **VBA CAN'T ADEQUATELY REPORT ON OTHER PRESUMPTIONS:** "VBA officials noted that it may be more useful to compare Gulf War Illness approval rates to those of other types of presumptive disability claims, such as those for presumptive illnesses VA associates with exposure to Agent Orange during the Vietnam War. However, the data provided to us by VBA did not allow us to conduct this analysis." (p. 18, footnote)
- **STILL NO CONSISTENT VA USE OF THE TERM "GULF WAR ILLNESS,"** despite strong NAS recommendations to use this term. "In 2015, VA's Office of Research and Development officially adopted the term 'Gulf War Illness presenting as chronic multisymptom illness' to describe symptoms of undiagnosed illness or medically unexplained chronic multisymptom illness." (p. 6, footnote)
- **VA DOESN'T HEED RECOMMENDATIONS:** "According to a June 2014 report published by [a VA] internal workgroup, VA had yet to implement many recommendations related to programs and services for Gulf War veterans made by internal task forces and external advisory committees to senior VA leadership over the years. In June 2014, this workgroup's environmental scan identified several deficiencies regarding VA's response to Gulf War Illness, including that there is: *no overarching Department-level strategy for Gulf War veterans; *no well-coordinated process for receiving recommendations or implementing plans to respond to recommendations; and *no clear consensus on a single case definition for Gulf War Illness." (p. 12)

- **PROCESS FOR NEW PRESUMPTIVES FLAWED:** GAO notes that some VA research, ".is directly relevant to the disability compensation program; for example, it has been used to establish additional presumptive conditions." (p. 26). However, no examples are cited because, beyond nine infectious endemic diseases, VA has found none. "VA has not identified any new presumptive conditions that it associates with Gulf War service since adding the nine infectious diseases in 2010." (p. 29). "Some presumptive conditions have been added through legislation. As we previously noted, in 1994 a presumptive service connection for "undiagnosed illness" for Gulf War veterans was established, and in 2001 legislation was enacted establishing "medically unexplained chronic multisymptom illnesses" as being presumptively service connected for these veterans." (p. 27, footnote)
- **BRAIN CANCER PRESUMPTIVE DENIED:** "VA officials said the agency decided not to proceed, citing limited scientific evidence from a 2016 National Academy of Medicine report." (p. 29)
- **GAO RECOMMENDED VA:** ".require medical examiners to complete training . before conducting these exams."; ". require that decision letters indicate whether Gulf War Illness medical issues were evaluated under both a presumptive and direct service connection method."; and, "...prepare and document a plan to develop a single case definition of Gulf War Illness." . "This plan should include near- and long-term specific actions, such as analyzing and leveraging information in existing datasets and identifying any areas for future research to help VA achieve this goal." (p. 32)
- **VA AGREED:** "VA said it plans to make its 90-minute web-based training course mandatory for its medical examiners who conduct Gulf War Illness exams. VA also stated it will improve how it communicates decisions to veterans and is in the process of updating its guidance to the regional offices to clarify the language required for its Gulf War Illness decision letters. Finally, VA said it will convene a group of subject matter experts to work on a plan-as described in our report-to establish a single case definition of Gulf War Illness." (p. 33)
- **GAO ADMONISHMENT - ACTION PLANS:** "According to federal internal control standards, an agency's objectives should be defined in specific terms, including clearly defining how the objective is to be achieved and who is responsible for achieving the objective, as well as establishing time frames for meeting the agency's goal. These measures allow agencies to track progress toward achieving their goals." (p. 31, footnote)
- **GAO ADMONISHMENT - COMPETENCE IS A BASIC PRINCIPLE:** "Demonstrating a commitment to competence is a principle of federal internal control standards." (p. 23, footnote)

PREVIOUS INVESTIGATIONS

This latest GAO report is just the latest in a long line of GAO, Congressional, and other investigations. In 1996, a GAO investigation found that VA had denied Gulf War veterans' undiagnosed illness (UDX) claims under the 1994 law at a rate of 95 percent.[2] Additional hearings, legislation, advocacy, and major public outcry by the nation's ill Gulf War veterans eventually resulted in two major bills enacted in 1998 that sought to fix these issues with what appeared to be a clear, comprehensive framework for Gulf War veterans' healthcare, research, and disability benefits.[3]

The next major update followed shortly thereafter. Legislation in 2001 added signs and symptoms of undiagnosed illness, and "medically unexplained chronic multisymptom illness (such as chronic fatigue syndrome, fibromyalgia, and irritable

[2] U.S. General Accounting Office, "Veterans' Compensation: Evidence Considered in Persian Gulf War Undiagnosed Illness Claims" (GAO/HEHS–96–112), May 1996, p. 3.

[3] As I noted in our testimony of February 23, 2016 to the Subcommittee on Oversight and Investigations (O&I), and our written submission for the record of March 6, 2016 for a joint O&I and Disability and Memorial Affairs subcommittees, these were the Persian Gulf War Veterans Act of 1998 (Title XVI, P.L. 105–277) and the Veterans Programs Enhancement Act of 1998 (P.L. 105–368, Title I-"Provisions Relating to Veterans of Persian Gulf War and Future Conflicts") were two landmark bills, that, "for those of us involved in fighting for the creation and enactment of these laws, they seemed clear and straightforward, with a comprehensive, statutorily-mandated plan that would guarantee research, treatments, appropriate benefits, and help ensure that lessons learned from our experiences would result in never again allowing what happened to us to happen to future generations of warriors."

bowel syndrome) that is defined by a cluster of signs or symptoms.)".[4] This was the last significant legislative change to Gulf War Illness claims.

However, as we described last year, the implementation of all of these Gulf War laws aimed at helping ill Gulf War veterans has been fraught with challenges. Myriad VA-contracted National Academy of Medicine (formerly the Institute of Medicine (IOM)) literature reviews, at a cost of millions upon millions of dollars, have resulted in no new presumptive conditions related to Gulf War Illness, no new case definition of Gulf War Illness, no better assistance for ill Gulf War veterans seeking VA healthcare or benefits.

Last year, detailed testimony[5] to the House Veterans' Affairs Subcommittee on Oversight and Investigations documented that the negative conclusions of these reports reflected the refusal of the NAM (with the blessing and at times collusion of VA) to follow the clear language of the statute requiring the reports as to the appropriate standard review.

Meanwhile, the challenges with VA continue, some specific to GWI and some more generally applicable. For example, in 2002, GAO found that VBA letters to claimants needed to be improved.[6] However, this 2017 GAO report - with its major findings related to flawed GWI notification letters to claimants - shows that these 2002 recommendations to VBA were not fully heeded.

Then, in two 2004 reports, GAO found that the federal GWI research strategy needed reassessment,[7] and that federal GWI research efforts had waned.[8] In FY06, Congress created the Gulf War Illness Research Program (GWIRP) within the Congressionally Directed Medical Research Program (CDMRP) portfolio that is managed by the U.S. Army Medical Research and Materiel Command (USAMRMC). Also in 2004, GAO found that DoD conclusions about Gulf War troops' toxic exposures couldn't be supported.[9]

GWI CLAIMS DENIAL RATES

Advocacy by Gulf War veterans brought limited attention to the ongoing issue of VA denials of these GWI claims. In 2007, analysis of publicly reported VA data showed a 74 percent denial rate of all GWI claims.[10] Advocacy related to these continued denials of GWI claims, and in 2010, VA intervened to clarify that the CMI's listed in the 2001 law were merely "examples" of, and not an exclusive list of CMI's.[11]

Fast forward a few years, and VA once stopped its public reporting of GWI data. Data obtained in 2014 by a Congressional office from VA showed a nearly 80 percent overall denial rate of GWI claims.[12] That data also showed that VA approved 52 percent of denied GWI claims for other conditions, demonstrating an implicit VA

---

[4] Public Law 107–103, the "Veterans Education and Benefits Expansion Act of 2001," was enacted December 27, 2001; Section 202, "Payment of Compensation for Persian Gulf War Veterans with Certain Chronic Disabilities," took effect March 1, 2002.

[5] Statement of James H. Binns, U.S. House of Representatives Committee on Veterans' Affairs Subcommittee on Oversight and Investigations, hearing entitled, "Persian Gulf War: An Assessment of Health Outcomes on the 25th Anniversary", February 23, 2016, Washington, DC. http://docs.house.gov/meetings/VR/VR08/20160223/104497/HHRG–114–VR08–Bio-BinnsJ–20160223.pdf

[6] U.S. GAO, "Veterans Benefits Administration: Clarity of Letters to Claimants Needs to Be Improved" (GAO–02–395), April 23, 2002.

[7] U.S. GAO, "Department of Veterans Affairs: Federal Gulf War Illnesses Research Strategy Needs Reassessment (GAO–04–767) June 1, 2004.

[8] U.S. GAO, "Gulf War Illnesses: Federal Research Efforts Have Waned, and Research Findings Have Not Been Reassessed" (GAO–04–815T), June 1, 2004.

[9] U.S. GAO, "Gulf War Illnesses: DOD's Conclusions About U.S. Troops' Exposure Cannot Be Adequately Supported" (GAO–04–821T), June 1, 2004.

[10] As noted in my March 6, 2016 submission for the record, a May 2007 report from VA's Gulf War Information System (GWVIS) showed that of 13,027 GWI claims, only 3,384 had been approved - a 74 percent overall denial rate.

[11] U.S. Department of Veterans Affairs, "All VA Regional Offices Training Letter, SUBJECT: Adjudicating Claims Based on Service in the Gulf War and Southwest Asia" (10–01), stated in part: "The chronic disability patterns associated with these Southwest Asia environmental hazards have two distinct outcomes. One is referred to as "undiagnosed illnesses" and the other as 'diagnosed medically unexplained chronic multisymptom illnesses" that are without conclusive pathophysiology or etiology. Examples of these medically unexplained chronic multi-symptom illnesses include, but are not limited to: (1) chronic fatigue syndrome, (2) fibromyalgia, and (3) irritable bowel syndrome.'" [Emphasis added]

[12] U.S. Department of Veteran Affairs data, provided to the office of then-Representative Kerry Bentivolio, March 28, 2014. Analysis by VCS - Out of 54,193 GWI claims filed: 11,216 approved (20.7%), 42,977 denied (79.3%); 22,470 approved for other non-GWI conditions (41.5% of GWI claims filed, 52.3% of denied GWI claims), 20,507 denied for GWI and all other conditions (37.8%); average disability rating granted for GWI claims was 67 percent.

bias against approving GWI claims; however, two in very five (38 percent) of Gulf War veterans were denied in totality.

Rounded off, according to VCS analysis of VA data, this most recent data shows a 78 percent VA denial rate of Chronic Multisymtom Illness (CMI) GWI claims, an overall denial rate of these GWI claims of 87 percent, and a staggering 90 percent denial rate of Undiagnosed Illness (UDX) GWI claims. Data shown in in this new GAO investigation[13] is entirely consistent with the exceedingly high denial rates reported over the last two decades.

That UDX denial rate is approaching the 95 percent denial rate identified by GAO in a 1996 report that was part of the impetus for 1998 Persian Gulf War veterans legislation.

In more detail, the rates of VA denial of GWI claims continues to worsen. From a VCS analysis of VA data, for chronic multisymptom illness (CMI)[14] claims, VA's denial rates were as follows: in Fiscal Year 2011 - 72.5%, in FY12 - 72.1%, in FY13 - 75.3%, in FY14 - 77.0%, and in FY15 - 77.5%, as shown by VCS's analysis of GAO's newly reported FY15 full year VA data.

For undiagnosed illness (UDX)[15] claims, veterans' odds of approval are even worse and that VA's denial of these UDX claims is worsening: in FY11 - 80.5%, in FY12 - 78.4%, in FY13 - 78.6%, in FY14 - 83.1%, and in FY15 - 89.8%, again using the same methodology.

Combining these CMI and UDX data, VA's overall denial rates for GWI claims show a true downward spiral: in FY11 - 76.3%, in FY12 - 74.7%, in FY13 - 76.6%, in FY14 - 83.1%, and in FY15 - 86.7%, again using the same methodology.

This data also shows that that the rate of denial for UDX claims was higher than that of CMI claims in all but five of the 58 VA Regional Offices for which GAO reported FY15 GWI claims data. This is also significant, and demonstrates the disparity between Gulf War veterans getting a UDX GWI claim approved versus a CMI GWI claim approved. It also suggests that the Congressional intervention in 2001, which introduced CMI's to GWI claims, improved the plight of Gulf War veterans.

VBA REGIONAL OFFICES VARY WILDLY WHILE BAD PERFORMERS ARE DOING MORE CLAIMS

One aspect of these denials of GWI claims that went unremarked upon by GAO in this 2017 report is that one-third (9,875) of all the adjudicated FY15 GWI claims (28,250) were in just six of the 58 VA Regional Offices: Muskogee, OK (2,431, 94% denied); Roanoke, VA (2,124, 95% denied); Nashville, TN (1,763, 83% denied); Atlanta, GA (1,339, 93% denied); Columbia, SC (1,130, 90% denied); and Waco, TX (1,088, 92% denied). This implied that VA is sending claims from elsewhere in the country to at least these six offices, five of which have worse or far worse denial rates than the 86.7% national average.

GAO also did not remark on the discrepancies between VA Regional Offices, which are profound and imply extreme variation in claims processing standards of these claims depending on location and local management. Overall FY15 GWI denial rates ranged from 47% at Boston to 100% at Anchorage. CMI denial rates varied even more widely, ranging from 36% in Manila and 38% at Boston to 92% at Roanoke and 100% again at Anchorage.

Since VA has this data (it is VA-provided data, after all), it is entirely unclear why there has not been an internal investigation not only of these discrepancies, but also why there hasn't been a complete overhaul of GWI claims adjudication at the worst performers like Roanoke and Muskogee. Given that it can be inferred that VA is sending GWI claims to these offices from elsewhere, and that the data shows these regional offices have far higher than average denial rates, a cynical person might conclude this consolidation of GWI claims processing to high-denying offices was intentional.

RECOMMENDATIONS FOR LEGISLATION

In past testimony, we have provided numerous recommendations for legislative action. Today, we will focus on just a few.

A) Fixing GWI Claims should be the centerpiece of a legislative fix to help Gulf War veterans. After years of critiques, recommendations, hearings, in-

---

[13] U.S. Government Accountability Office, "Gulf War Illness: Improvements Needed for VA to Better Understand, Process, and Communicate Decisions on Claims" (GAO–17–811), June 2017.

[14] "CMI = Chronic Multisymptom Illness (Fibromyalgia DC 5025; Irritable Bowel Syndrome, DC 7319; Chronic Fatigue Syndrome, DC 6354) in either the hyphenated or primary code. If condition is both UDX and CMI, it is included in UDX counts."

[15] "UDX = Undiagnosed Illness, defined as diagnostic codes containing 88xx in either the hyphenated or primary code."

vestigative reports, and bad press, VA has yet to fix the GWI claims problem. Despite enactment in 2001 of legislation that created the new CMI presumptive and fine-tuned the original 1994 UDX presumptive, VA still remains hampered by training issues and inconsistent implementation between locales. However, though GAO reported VBA assertions of a training rate of 98 percent of its claims examiners, the issues continue.

In short, underlying these issues is that the "Undiagnosed Illness" claims adjudication framework utilized by VA simply doesn't work as Congress intended in 1994 and subsequent updates. This premise is supported by several factors, including the persistence of near-total denial rates of UDX claims and GAO's 2017 finding that some claims examiners will in essence never find in favor of an "undiagnosed illness" and "always attribute a veteran's symptoms to a diagnosable illness".

However, there may be another option. First, we note that that Congressional intervention in 2001, with the introduction of CMI's, consistently shows a better approval rate over claims adjudicated as UDX under the 1994 law that instituted these claims.

Next, we note that both PTSD and TBI claims have seen dramatic overhauls in recent years that made significant improvements over earlier processes. As a potential model of sorts for a future GWI claims schema, the current TBI rating system (DC 8045) uses a system of "buckets" of symptom sets, scored for severity as mild, moderate, or severe. While not perfect, it's not hard to envision major GWI symptom sets as a parallel to these TBI symptom "buckets" under DC 8045.

And, just like for TBI claims, it would be important to ensure that there are direct tie-in's for diagnosed conditions related to GWI. For example, sleep apnea, gastroesophageal reflux disease (GERD), and chronic sinusitis are three of several commonly reported conditions among ill Gulf War veterans. However, due to epidemiological research inadequacies and the inherent requirements of undiagnosed illness claims, once diagnosed these conditions - more likely symptoms of the underlying GWI - no longer qualify to be rated under the UDX presumptive.

Given VA's track record of failure on these issues, including the failure to heed recommendations as noted in this 2017 GAO report, the process to create this new GWI claims schema should also be statutorily mandated. It should include a statutorily-mandated panel to lead this process composed of VHA and VBA key personnel and subject matter experts (including those involved in the process to create the new TBI claims rating schedule), clinical and research experts on GWI including as identified by the Gulf War Illness Research Program within the DoD Congressionally Directed Medical Research Program, representatives of stakeholder veterans service organizations, and engaged Gulf War veteran advocate stakeholders.

It should be given a timeline to conclude its work, as short as feasible given the many years ill Gulf War veterans have been suffering under the present unworkable UDX and CMI GWI claims system. And, with these medical experts included, a scientific case definition that may still be years in the future may not be needed to create a workable GWI claims adjudication mechanism favorable to ill Gulf War veterans. Finally, the new rating schedule developed under this process should be published by VA as regulation with sufficient opportunity for public comment.

We want to work with VA to fix this. To that end, in collaboration with other veterans service organization we have requested a meeting with top VA officials to seek resolution. However, given that VA has had decades to find a solution on its own but hasn't, active Congressional involvement and statutory mandates seem likely to be necessary to mandate this process.

Recommendation: As the centerpiece of a legislative package to right as many ongoing wrongs as possible for Gulf War veterans, Congress should statutorily mandate a process to create a new, more viable GWI claims adjudication rating schedule in as short a timeline as possible.

B) Mandatory Training. In this new report, GAO identified areas of concern related to staff training as one probable cause of GWI claims denials. Therefore, it is worth referencing VA's new performance standards for claims rating staff (Rating Veterans Service Representatives, or RVSR's) that went into effect on July 1st. In these new performance standards, staff training was listed as a "non-critical element" of performance. Similarly deemphasized in these new performance standards was "Organizational Support - qualitative and quantitative measurement of positive internal and external customer service and organizational support."

By contrast, the "critical elements" of these new performance standards include only accuracy, speed, and output. And, it remains unclear how appropriately VBA measures accuracy, given the high rates of success among veterans who appeal their denied claims (not GWI-specific).

It is unconscionable that Gulf War (and other) veterans' disability claims rely upon being reviewed by untrained medical examiners and claims staff, and that VBA has deprioritized training and customer satisfaction over speedy output. These new performance standards help underscore how these negative GWI claims outcomes are, in part, systematically allowed to occur.

And last year, we reported to your Subcommittees in our statement for the record that VA had amended Gulf War provisions in the M21–1 "Veterans Benefits Manual," which is used by VBA for rating claims. However, the spiraling VA claims denial rates and GAO's most recent findings of untrained staff and an array of reasons underlying VA's denial of Gulf War veterans' claims suggest that this intervention had far too little positive effect, if any.

Indeed, last year the Senate Appropriations Committee included the following proviso in report language accompanying the FY 2017 Defense Appropriations Bill: "While the Committee commends VA on its efforts to revise the Compensation and Pension manual for "Service Connection for Certain Disabilities Associated with Gulf War Service," concern remains that VA claims adjudicators are not consistently following these changes."

However, it is presently unclear whether there was any response by VA to this or any of the sixteen (16) Gulf-War veteran-related provisos included by the Senate Appropriations Committee or the several similar provisos included by the House Appropriations Committee and by the conference committee in its Joint Explanatory Statement.

Recommendation: Specialized training related to the type of claim involved should be statutorily mandated for all VA claims staff, including medical examiners and rating staff.

Recommendation: VBA should be statutorily mandated to report data to Congress that emphasizes and measures training, and the consistency of training and claims adjudication between each VBA regional office.

C) Gulf War Veterans Who Aren't Gulf War Veterans to VA. The federal government has two different definitions for service in Southwest Asia (SWA), the geographic location of the Gulf War. The U.S. Department of Defense (DOD) uses a more expansive definition for military service with its criteria for awarding the Southwest Asia Service Medal (SWASM). Meanwhile, the U.S. Department of Veterans Affairs (VA) uses a narrower definition of SWA to determine eligibility for benefits.

As a result of these two different definitions, a small number of U.S. service members who deployed to Israel, Egypt, Turkey, Syria, and Jordan, including airspace and territorial waters, are eligible to receive the SWASM as Gulf War veteran but are not eligible for Gulf War-specific benefits administered by VA.

Recommendation: VA should be statutorily mandated to amend the definition of SWA at 38 CFR § 3.317(e) to include the additional geographic locations in 32 CFR § 578.27(b) listed above.

D) VA Needs to Track, Analyze, and Regularly Report VA Utilization Data for 1990–91 Gulf War Veterans. In 2010, VCS testified, "At present, VA has no idea how many UDX claims have been granted or denied." This 2017 GAO report makes it clear that VA has not been consistently tracking GWI claim denials and approvals, with about 41,000 veterans' GWI claims not included in VA's data reporting.

VA should have a statutory mandate to report quarterly and in perpetuity a comprehensive package of VBA and VHA usage and benefits data. These reports should include raw and analyzed data on the numbers and rates of claims filed, approved, and denied by era and actual war service (i.e., 1991 Persian Gulf War, etc.), and healthcare utilization also broken down by cohort. For 1991 Gulf War data, the recommendations adopted unanimously in 2012 by the Research Advisory Committee on Gulf War Veterans' Illnesses (RAC) should be implemented. These new quarterly data reports should be publicly accessible to enhance VA accountability.

Recommendation: VA should have a statutory mandate to publicly report quarterly and in perpetuity a comprehensive package of VBA and VHA usage and benefits data that includes the 2012 recommendations adopted unanimously by the RAC.

E) Other recommendations for legislation. Along with comprehensive reviews of the 1994, 1998, and 2001 laws, our numerous recommendations for legislative action made in previous testimony that should now be reviewed, including :

- **Added Presumptives.** As part of a tie-in with a new claims schema for GWI claims, there should be consideration of statutory mandates for presumptives for Gulf War veterans for brain cancer, lung cancer, migraines, GERD, chronic

sinusitis, and the numerous other conditions shown in one or more VA epidemiological studies as occurring at higher rates than control populations.

- **National Toxic Exposures Advisory Committee.** Creation of a new, interagency (HHS, DoD including CDMRP, and VA including both VHA–ORD and VHA–PDHS) national advisory committee on toxic exposures, with a scope that spans quality of life measures from healthcare to benefits. Examples of toxic exposures include Agent Orange, 1991 Gulf War exposures, chemical warfare agent exposures, burn pits and airborne hazards, Camp Lejeune drinking water, and so on.
- **WRIISC's.** Expanding VHA's War Related Illness and Injury Study Centers to make them more accessible and for clinical treatment, not just one-time clinical evaluation and medical research.
- **Gulf War Registry.** Enhancing VA's Gulf War Registry to make it a meaningful medical surveillance tool to help identify emerging medical trends among Gulf War veterans.
- **Gulf War Spouses and Children Registry.** Consider restoring this former registry, also as a meaningful medical surveillance tool to help identify emerging medical trends.
- **Reform of the relationship between VA and the National Academy of Medicine.** Congress depends on the National Academy of Medicine for unbiased judgment medical issues involving veterans. Congress orders VA to contract with the NAM for reports on these issues. Too often, the reports fail to live up to this unbiased standard. VA routinely fails to contract for the report as specified by Congress. And NAM committees frequently include former VA officials and contractors in the areas addressed by the reports. Legislation is sorely needed to restore the impartiality of NAM reports on veterans' medical issues.
- **RAC restoration.** In 2013, the U.S. House passed legislation under unanimous consent that would restore the Research Advisory Committee on Gulf War Veterans' Illnesses (RAC) to its original intent, though it failed to be taken up in the Senate before the Congress ended. That legislation should be reviewed for potential revision and reintroduction.

EXHIBIT 1: GULF WAR VETERANS AFFECTED BY VA'S GWI CLAIMS DENIALS

Collected July 2017

The following are accounts from Gulf War veterans - in their own words—whose claims have been denied by VA for Gulf War Illness presumptives, including undiagnosed illnesses (UDX) and chronic multisymptom illnesses (CMI's) like fibromyalgia, chronic fatigue syndrome (CFS), and functional gastro-intestinal disorders (including irritable bowel syndrome (IBS)).

Arizona

I just moved to Arizona from being in California for past 7 years. I was diagnosed with Multiple sclerosis and Lhermitte's while working up in Oregon. This was in Sept 2015. The VA kept me overnight to run more tests, and next morning the Neurology team came in and asked how long I had this disease, and I said 3 weeks. They said I had this at least 15 years or more. The main neurologist was surprised that I was not blind, paralyzed, or both by looking at my charts.

* I filed my claim when I got back to Huntington beach CA. in July 26th 2016.

* After getting more exams from Long beach VA, and getting my Rep with Paralyzed Veterans of America, we filed a claim. My presumptive conditions are: Multiple sclerosis and Lhermitte's, Chronic Fatigue, Chronic Joint Pain, degeneration discs and right hip, shooting pain in feet.

* I have a Nexus letter from my primary doctor from Salem OR, that was a specialist in MS. Stating that my condition was highly rated from being triggered from the Gulf War exposure of Oil well fires and possible Gas exposure. He had gone through my records to confirm of my unit and locations. I have x-rays of my joints, spine, and hip to confirm degeneration. I have multiple MRI's to confirm of the lesions on my brain and my spine for Multiple sclerosis and Lhermitte's. Paralyzed Veterans of America have my first contact info from 1994 of the first Gulf War Registry of me having the same issues that I have today, only now they are more extreme. I have letters/statements from veterans, current military servicemen, and family members. I have followed the book on preparing my case to file my claim only to be denied. I have a mountain of evidence and doctors to back my claim up. Doctors have been actually shocked that I am not on disability.

*The only reason I have from the VA for being denied is "Not service connected".

* My next step as of Monday July 10th, 2017, is getting my Rep with Paralyzed Veterans of America to get me answers and sent a letter of to an Accredited Claims Agent to see my next step.

*Not sure what an appeal would do except wait another 2–5 years for a response.

*Impact on me is that now that I have heard the stories of the VA and now that I am in the process of being pushed aside is appalling. It is completely amazing how bad the process is for all of us Veterans. Just disgusted.

Arkansas

I was diagnosed with a myoclonus (research this condition, it is the perfect example of an undiagnosed condition) a few weeks (May 1991) after I spent 8 months during desert shield/storm. I was told it was a seizure disorder and prescribed seizure medication. Not knowing that the medication side effects would cause me to get discharged, I was told at the time I did not have a claim. This diagnosis was re-affirmed in 1992, 2007, and 2010. And I'm still fighting the validity of the claim of "Gulf War Illness" and seizure disorder, as the V.A. has denied both and reworded my claim. That is a small example of the many medical conditions that I have that fall under GWI that I am fighting since 2007 when GWI was recognized by congress.

California

Around 1990 I was invited to attend SFOD–D, during the selection process I was given a flight physical which I passed with no issues and was given a class date in March of 1991. Desert Storm kicked off not long after this and I was cross-levelled to 2nd ACR for Desert Storm where I served as a Bradley Cmdr. Upon my return I was ordered to the 101st. Where I was seen for rash, heart rhythm disturbances and tachycardia (POTS) and vertigo, also present was persistent flu like body aches after physical exertion. I was informed these issues were psychological. I left the Infantry in 1994 and filed a claim which was denied. I filed another claim in 2007 which was denied.

I filed another claim in 2009 for IBS which was granted.

In 2015 I had a serious flair which again brought the heart rhythm disturbances (NSVT, PSVT and POTS) along with many of the issues associated with GWI:

- Neuropsychological deficits (documented by exam)
- Cardiovascular signs or symptoms (documented by exam with no explanation or identifiable pathology)
- CFS, (documented by WRIISC) and recently Dr. Baraniuk.

These and a few others were included in a claim filed in May of 2015, all of which were denied.

It was not until [VSO's] took my case before the director did I receive a partial award for CFS, all other issues are on appeal with no end in sight.

There is no way I can cover everything, I am too cognitively compromised and intend to hire an attorney to engage the VBA from this point forward.

[VSO's] have some of these documents but I assure you there is evidence to back up each of these claims. The VBA has it in their files.

Most, if not all denials were "Not service connected " per the VBA.

Florida

I live in the Tampa bay area in Florida. I made a claim for CFS in 2008 and subsequently in 2010 pointing specifically to the presumptive law. Both were denied for lack of evidence. I included doctors' notes, and diagnosis from the VA primary care and chronic pain clinics. I did not appeal as I was at my wits end at this point given the VBA denied a claim with diagnostics from the VAMC. (The VA denied a claim based on a diagnosis for a presumptive condition by the VA) I am contemplating reopening the claim and adding more evidence in terms of diagnosis and treatment records however the previous two attempts were denied specifically because there was no evidence in my service medical records. At least I presume that given "lack of evidence" is a broad statement. At the time I was being treated for chronic fatigue and chronic pain. This again is for a presumptive...

I was informed by a claims examiner that if they can offer a diagnosis then undiagnosed illness is out the window given it is then diagnosed. This leaves a veteran suffering with a now known condition that the VA can comfortably deny any claim against. That is a huge loophole given often a diagnosis may not be well grounded and based solely on symptoms presented. Often the symptoms may fit many diagnosis and they pick one. I claimed CFS specifically along with physical symptoms that were at the time present but undiagnosed.

The impact of the denial has both a psychological and a physical impact. It makes you feel like you are being brushed away and are wasting energy and time on an impossible brick wall of bureaucratic red tape. This seems to encourage you to abandon hope of any successful claim. I do not have the resources to mount a legal challenge and frankly do not have the energy to either. Physically this leaves me paying out of pocket often to treat the conditions if I seek treatment outside of the VA. The medical supports would be wonderful but seem out of reach. The compensation would assist in support of life in general that tends to revolve around managing chronic conditions first and working when and where one is able so as to survive without becoming homeless.

This feeds stress generally which exacerbates said chronic conditions. Ultimately if we are really dedicated to the care and wellbeing of our veterans then it is Congress that must act to clarify title 38 and end this debacle. It is Congress that as well needs to properly fund the VA or other programs that will provide care and compensation. It is a cost of war and it is hard to define... how much is a Seminormal life worth over what time span and by how many hundreds of thousands of impacted persons? We stood up... we are still paying a price... help please.

Indiana

I live in Indiana (Jeffersonville) and I filed in 2015 for gastrointestinal issue and IBS problems. I submitted a direct questionnaire from my personal doctor on these issues.

The VA denied saying that it was not service related. I appealed and got denied again.

Without the meds I take I couldn't do the job I do every day with an approved claim I could go back to school and do something easier on my body.

Iowa

I am a retired Army MSG. I am also disabled through the VA. I served in the Gulf War from October 1990 through June 1991. I served all over the theater from Saudi Arabia, Southern Iraq, Kuwait, and Northern Iraq. I am a combat veteran. I currently live approximately 45 miles from Des Moines Iowa.

I originally filed with the VA for Gulf War Illness in the summer of 1998 while living in NC, just after I retired at the end of May. I was just getting my notices for exams when my Gulf War veteran wife took her own life. Due to circumstance and the severe depression and other health issues I was unable to comply with those notices. The VA denied everything due to that failure.

My second filing was in Iowa in 2008. I filed for the same issues. I had been seeing medical professionals continuously since retirement. All of that information was either directly obtained by myself or provided or the VA obtained it through permission from me. My first compensation and pension examination was right after Memorial Day 2009. I was unable to comply because I was hospitalized with pancreatitis during that weekend.

Even though my physician notified the VA my file was pulled for non-compliance. I fought and involved my congressman and eventually the file was returned and I was examined the first time in 2009 and other times into 2010. None of the exams were for GWI specifically. That exam was referred to Public Health.

However, I had claimed Chronic Fatigue Syndrome/Fibromyalgia, Irritable Bowel Syndrome, as well as sleep disorder/sleep apnea and much more symptomology that was unexplained and still is. All was denied except 10% for IBS. All were appealed and again IBS was approved at 30% and all other denied. IBS was not approved as a GWI presumptive. All denials were stated to be unrelated to my service although most if not all were recorded on my retirement physical. The appeal awarded me 100% P&T with only one GWI related issue. Due to the huge backlog in claims I was advised not to pursue at that time.

I still suffer all the symptoms I had following the GW and they have progressively worsened. The lack of diagnoses prohibits possible treatments. The entire merry go round of seek and deny exasperates the depressive disorder I share with my PTSD.

Kentucky

I am in Louisville, Kentucky.

I filed for a constellation of neurological symptoms with no diagnosis in 2013, and was denied for each symptom of my undiagnosed illness.

I appealed in 2014 with a new diagnosis of cramp fasciculation syndrome on the argument that I should have been approved for undiagnosed illness, but now should be approved for an idiopathic chronic multisymptom illness. I was then denied for no service connection.

I appealed that decision citing the presumptive in 2015. My appeal has been reviewed by the Star team twice and sent back to the regional office and denied each time. The examiner's opinion, a nurse practitioner, seems to carry more weight than my VA neurologist who diagnosed me, and the Chief Examiner in DC. The last statement of the case said the nurse practitioner's opinion was more compelling.

The claim is now awaiting a hearing with the board of appeals.

I filed for IBS in 2016. The same examiner stated it could not be service connected. I was denied for no service connection. The Star team sent it back for correction. The examiner literally described my severe symptoms, and stated I experience them moderately. I am currently rated at 10%, and have appealed for 30%. This claim is also going to the board.

I am facing an early retirement due to my health. The failure of the VA to provide me with adequate care, and then basing the rating decision on that same inadequate care is causing me an unnecessary amount of distress and financial hardship.

Louisiana

I am in Louisiana and continue to be denied for fibromyalgia since 2000. I have documentation signed by a rheumatologist in a Gulf War exam in 1994 with that diagnosis. I am currently on Cymbalta with VA medical records stating that I declined Lyrica because it has not worked for me in the past. An NP at a C&P exam recently told me that I was never diagnosed with fibromyalgia, and I am not on any medications to treat fibromyalgia. I received a call last week from a VA employee at the central office stating that there was enough evidence in my file for service connection, and that I need to get my case out of my regional office.

There is more to the story. I was sitting in my VSO's office on 27 March 2017, discussing which conditions we would forward to DC on appeal, when my phone rang, it was an employee from legal at the RO. He told me there was enough evidence for a CUE. As he was talking, my VSO was typing. That too has been denied. After several calls, to include one to the White House complaint line, a supervisor from the RO called me and told me that the VBA judges have "more leniency" than she has, and that she would need a nexus letter. I informed her that it was my understanding that for presumptive conditions, with a diagnosis, no nexus was needed.

I came home from vacation today and this was in my mail. I might find the irony in this funny if they had not been denying me since 2000. "Dear [Veteran's name], We received your correspondence indicating that you would like to file a claim for benefits. VA regulations now require all claims to be submitted on a standardized form. What Should You Do? In order for us to begin processing your claim, you must submit an application for benefits." [From the U.S. Department of Veterans Affairs]

Maryland #1

I have been diagnosed with fibromyalgia, CFS, IBS, and migraines. VA states I'm only eligible for migraines and Fibromyalgia. They sent my appeal to board without a review. Stating all my symptoms are fibromyalgia related.

This case was done at the Baltimore RO, it was expedited to clear the backlog. The VBA's Star Team review, but only looked at the IBS and agreed it was separate from the fibromyalgia and recommended that a claim for IU be submitted. They didn't look at the Chronic Fatigue Syndrome diagnosis. The case was denied because supposedly [the] diagnosed condition of CFS isn't related to military service, the decision is in violation of the statute.

The RO never communicated that they received diagnosis of IBS, they did in fact communicate receiving diagnosis and DBQ for Chronic Fatigue Syndrome, but stated that the CFS wasn't related to military service.

Maryland #2

I now live in Maryland. I filed for the first time in 1991 three months after coming home for headaches and fatigue and was denied. There are other issues that I have filed for over the years that fall under the Presumptive Illness List but I will concentrate on these two diagnoses.

I never had a migraine in my life until 3 months after I returned from the Gulf. The headaches over the years went from here and there to daily occurrences that included migraines thrown in every few days. I am on daily medication to help keep the headaches from turning into migraines on a daily basis.

The fatigue is just as bad. Some days it hits me out of the blue and I literally can't get out of bed for days on end. I just sleep. As an example, I just went through a phase this week: I slept 14 1/2 hours, woke up for 3 hours, slept for another 8 1/2. This is right off my Fitbit.

Yet, after filing in 1991 again in 2012 and again last year I have been denied each time. How am I supposed work when I LITERALLY can not get out of bed? I wish I could work EVERYDAY! This is not how I saw my life at 47 years old. But I would go and serve all over again knowing where I am now. Because I know that I helped people while I served my time in the sandbox with my unit, Fleet Hospital 15.

Ohio

I suffer from dizziness. It's constant, but comes with episodes of severe debilitating loss if muscle control. I call it dizziness because it feels like I don't have my balance, but it's more than that, I get unreasonably depressed, can't walk, feel like I'm falling all the time. It started years earlier, but being young I just wrote it off as being hungry or tired.

When it became debilitating i went to the best neurologist at the Cleveland clinic. They have no idea what it is, but tried treating me with anti-seizure medicine, migraine and multiple other things. None of them worked. He believes they are caused by constant migraine headaches without aura or pain. He found the VA presumptive conditions and suggested I should pursue it because he couldn't solve it.

In about 2013 I applied under the gulf war presumptive conditions first for dizziness. They denied me because in the 90s I had positional vertigo, they said it was the same thing. I appealed in 2014, they denied me.

I then filed in 2015 for migraine induced dizziness, they denied me for chronic fatigue syndrome. You will note, I did not apply for chronic fatigue syndrome, I applied for migraine induced dizziness, which meant not only was I denied, I could not appeal it because I had no evidence for chronic fatigue. It was no mistake on my or my VSC representative's fault, they just changed it.

So we refiled, with another note and more evidence from my neurologist, headache with a secondary condition of dizziness. They denied it because I once had a tension headache.

We appealed with another note from my neurologist stating I was not having tension headaches, listing the clinical and medical definitions of both, and quoting the VAs presumptive description which didn't specify any particular type of headache anyway.

It's been about eight months since that. I'm still disabled, employed by the grace of my employer that understands and gives me time off any time I am ill. I pass out randomly and have symptoms mimicking heart attack because of also having a rating for irritable bowel.

I'm tens of thousands in debt for the bills I've incurred. My life is changed forever. There are days that I can't get out of my chair.

Pennsylvania #1

I live in Pennsylvania. The following is my statement of claim for denial of CFS and Fibro:

The AOJ provided a VA examination dated April 7, 2017 unfortunately the exam was inadequate. The exam was not based upon the medical record, specifically the Georgetown University Progress Notes dated March 02, 2017 in which James N. Baraniuk, MD (Professor of Medicine, Division of Rheumatology, Immunology and Allergy, Director of the Chronic Pain and Fatigue Research Center, Georgetown University) diagnosed me with Chronic Fatigue Syndrome using the Centers for Disease Control (Fukuda 1994) criteria, and he diagnosed me with Fibromyalgia using the 2010, & 2011 Modified American College of Rheumatology criteria (SEE: Georgetown University Progress Notes dated March 02, 2017). A medical examination is considered adequate "where it is based upon consideration of the veteran's prior medical history" (SEE: Ardison v. Brown, 6 Vet.App. 405, 407 (1994).

The examiner falsified the April 7, 2017 exam; he never touched me on any area of my body to check for tenderness, in fact the only contact with this examiner was to shake my hand upon arrival and departure. He spent approximately half of the allotted time for the VA examination admiring my service dog which had nothing to do with my claimed conditions of fibromyalgia and chronic fatigue syndrome. He then leafed thru the Georgetown University progress notes and asked about Dr. Baraniuk's credentials, but apparently investigated no further because he stated that my condition (fibromyalgia) "was never confirmed by a specialist." (SEE: VA Form 21–4138, statement concerning exam of April 7, 2017).

If this examiner had taken the time to investigate the credentials of Dr. Baraniuk, he would have found with a simple search on the internet that James N. Baraniuk, M.D. is the Associate Professor of Medicine, Division of Rheumatology, Immunology and Allergy, at Georgetown University. He is the Director of Georgetown's Chronic Pain and Fatigue Research Center and is one of the nation's leading experts on both fibromyalgia and chronic fatigue syndrome (SEE: me-pedia.org

James Baraniuk printable). He is also one of the nation's leading experts on disabilities occurring in Persian Gulf veterans. His curriculum vita (CV doc) is 41 pages long (SEE: James N. Baraniuk, M.D., curriculum vita).

The examiner errored in his rational when he stated that because exposures to environmental hazards were about 25 years ago, he could not confirm any disability pattern that would be related to Southwest Asia service. The Department of Veterans Affairs' Employee Education System and the Office of Disability and Medical Assessment (DMA) offer a Gulf War General Medical Examination Course. If the examiner had participated in this training or referenced the notice to examiners in Southwest Asia claims, found in Part IV, subpart ii, 1.E. 19.g of the M21–1 manual he would have understood that the examiner is to provide a medical statement explaining the Veteran's disability pattern. Fibromyalgia and Chronic fatigue Syndrome are both diagnosable but medically unexplained chronic multi-symptom illnesses of unknown etiology, and they are disability pattern 2, a diagnosable but medically unexplained chronic multisymptom illness. The notice to examiners in Southwest Asia claims tells the examiner that he or she shall not provide a medical opinion (nexus) for disability pattern (1) or (2) as to whether the condition was incurred - caused by service. Clearly the notice to examiners in Southwest Asia claims was not followed as this examiner, in violation of the statue, imposed a nexus requirement.

The AOJ's adjudicator failed to recognize that a Gulf War veteran does not have to prove any link to the veteran's service and the VA cannot impose a nexus requirement under the provisions of 38 CFR § 3.317. Fibromyalgia and chronic fatigue syndrome are presumptive illnesses for Gulf War veterans; VA presumes that these conditions were caused by military service. The decision of May 12, 2017 is clearly and unmistakably erroneous as it is in violation of statue, VA regulations and VA procedures.

This C&) was done April 7, 2016. Denial was dated May 26, 2016. Less than 32 days. (working days)

Pennsylvania #2

I am a 20 year Marine Corps Veteran (1984–2004) who served in the Persian Gulf from August 1990 - April 1991.It was mandated that I receive the Anthrax Vaccinations (Series of 6 shots) but I only received 5 shots because the program was Temporarily halted prior to my 6 shot and at a later date restarted. No explanation! I was also required to take the progesterone Bromide Pills (3 weeks) while serving in country during Operation Desert Storm.Prior to and since my retirement from Active Duty, I have reported numerous medical problems that have not been adequately treated or document to include:I am from Pennsylvania (Pittsburgh VA Healthcare System).

2006 - MAJOR DEPRESSIVE DISORDER: I was diagnosed and medicated for the treatment of Major Depression. I filed a claim through the VA that was DENIED and the examiner inappropriately diagnosed me, based off of personal opinion as being an Alcohol Abuser. I never drank in the military and have only been a Social drinker since being discharged. I have NEVER abused Alcohol or any other Illegal drugs.

On February 6–9, 2017, because of the intense pain and Fatigue that I suffer from among other things on A DAILY BASIS, I applied for, was accepted and participated in a DOD Gulf War Illness Research Study conducted at Georgetown University by Dr. James N. Baraniuk M D. My decision to participate in the aforementioned study was based off of the fact that Dr. Baraniuk is an Associate Professor of Medicine, Director of Rheumatology, Immunology and Allergy, Director of Chronic Pain and Research at Georgetown University. He is also one of the Nation's leading experts on both Fibromyalgia and Chronic Fatigue (SEE; me-pedia.org James Baraniuk). I found this information through a simple search on the internet.

Through this intense 4 day study Dr. Baraniuk spent more than 15 1/2 hours with me, one on one, after the testing. I also had my service Medical Records and Deployment Records with me for review. As a result of the study, I received a POSITIVE diagnosis for GWI (per the Kansas Criteria), Fibromyalgia (per the 1999, 2010 & 2011 standards), IBS–C and Chronic Fatigue. The doctor also noted, utilizing my VA treatment records, PTSD, DEPRESSION and SLEEP APNEA.

Upon completion of the study, I spent the next 3 Months conducting follow up appointments through the Pittsburgh VA for testing evaluation and treatment. I also filed claims through the VA.

The Medical Examiner, who lacked the specialized credentials that Dr. Baraniuk possesses, proceeded to discredit Dr. Baraniuk's progress notes by stating "that study is done for research purposes only... Not for diagnosis proposes" the Medical Examiner, a Nurse Practicioner... NOT an MD, wow these remarks in her notes.

My claims for IBS and Fibromyalgia were DENIED under the Chronic Multisymptom Illnesses (CMI) because the medical examiner noted that I have clear and diagnosable illnesses.

I clearly have a Medical diagnosis for IBS and Fibromyalgia (both are Gulf War Presumptives seperate from CMI) From Dr. Baraniuk and also from the VA since 2016 yet both were DENIED by the VA 's Rating Specialist.

The constant delay and deny and the Lack of understanding of the Gulf War Symptoms cause me daily anguish and pain. As a result of the lack of a proper diagnosis and treatment, my conditions have continually worsened to the point that I had to quit working at the age of 49 due to my mental and physical conditions yet the VA has still not recognized the importance of training their medical staff to understand and identify the issues that we, Gulf War Veterans, suffer from even though there is medical knowledge and research that has confirmed these issues that has been paid for and conducted by the Department of Defense!

I was also Service Connected at 0% from the VA in June 2017 for the frequent headaches that I suffer from (another Gulf War Presumptive). I've also had my CFS and Sinus (respiratory) claims denied twice. I have Sinusitis all through my Service Medical Records but the VA calls it Sinus Rhinitis

South Dakota

South Dakota, 1994 CFS, degenerative disease of the joints, memory issues, headaches Denied for not being noted on Service Records, same story on the Appeal. "filed as joint pain, headaches, memory issues, and being tired constantly" x-rays, lab work, Doctors reports submitted. 2001 Doctors claim it is arthritis, and not degenerative disease of the joints. New Claim, denied, Appeal Denied. Did not appear in Service. Doctors notes submitted. 2006 Doctor said I have CFS, New Claim, New Evidence denied again, Appeal Denied. Did not appear in Service. All records were forwarded with all claims from V.A. Doctors since 1993. Presumptive Laws never applied for my claims, I asked. Frustration with the whole V.A. claims system!

Texas

I'm writing this letter on behalf of my recently deceased husband, whose death took almost 26 years to complete, and waiting for compensation took a chunk of years as well. My husband came back from Dessert Storm with several symptoms, ranging from burning eyes, chronic fatigue, rashes, sore throat and various other flu like symptoms. Within 3 months of coming back while doing an exercise with the unit, was flipped over in his kayak. He came home pretty sore.

The next day his leg was swollen and very painful, he was rushed to Walter Reed and diagnosed with Antiphospholipid Syndrome, sticky blood? He had many other illnesses pop up such as a parathyroidectomy, scalp cysts removed, anemia and with these came much suffering. He was adamant about pushing forward, not complaining, being a soldier. His commander had a special meeting with a board at NSA regarding the need to keep this soldier because he was necessary for the missions due to his extensive language abilities. he was to stay stateside and work from here. During this time he had many bouts of illness without much complaining. In 2001 he retired after 21 years' service. At discharge he was giveb 30% disability.

By 2003 my husband had an attack of Retroperitoneal Fibrosis. Then Rhabdomyolysis and again the chronic fatigue was taking its toll. He applied to VA again, was denied and we presented more evidence taking a year to finally receive 60%. In the meantime we were in Fort Lewis and Madigan felt they could not help this man with such complicated problems so gave him the ability to use a private doctor. Then things got worse, he was diagnosed with Raynaud's Syndrome, toe removed, Sympathectomy surgery, and we were having to pay out of pocket up towards the thousands. The Autoimmune diseases seemed to cascade to 7 active diseases. My husband's dream was to move to New Braunfels, Texas and I researched the doctors in San Antonio. The trek across country began. This time I realized we had to have a doctor that would understand GULF WAR SYNDROME. This doctor did. My husband applied again in 2015 and by Jan. 2016 he was awarded 100% with the help of the doctor advocating for him. Twenty-six years of suffering and one year of that time he was 100% . He died, and written on the death certificate was pulmonary fibrosis as a result of Antiphospholipid Syndrome. He gave his all and had to fight to get just a piece of what was rightfully his!

Wisconsin

I am a Gulf War Veteran from Wisconsin. Entering the Marines out of High School, I was very experienced long distance runner at the peak of my health. In basic training, I very proudly placed second in the "Company Iron Man". Ultimately out performing all but one of 402 other Marines from all over the United States.

Little did I know at the time however that within two years of that performance and my return from the Persian Gulf, I would never run or regularly participate in athletics again without debilitating consequences. Ultimately I left the Military Reserves directly due to my inability to physically perform. Despite a written request for legal support and medical testing, I was denied this examination and given a General Discharge. I still had my honorable discharge from active duty and the war so I didn't really care.

I have fought my physical battle completely on my own for the last thirty years until visiting the VA for the first time about 5 years ago at the urging of my former company Gunny and other members of my Unit. I first applied for connected disability in May of 2014. If there ever was a text book case of Gulf War Illness, it is me. Due to a VSO error my claim was not placed until November of that year. Approximately one year later, I was denied all issues claimed to include Chronic Fatigue, Gastrointestinal Issues, Sleep Deprivation, Joint and Tendon Issues (Fibromyalgia), Depression, and a chest injury which occurred while in active service.

Evidence provided was my SRB, and all of my medical records from the VA to that point which included all labs and imaging. I had also participated in a War Related Illness Study which I also provided records of. It was the conclusion of this VA Department that all of my current medical conditions and symptoms "are consistent and meet the VA Case definition of Gulf War Illness. I have now been invited to participate in no less than four gulf war illness studies through the VA.

While some aspects of my initial denial were from "conveniently" missing components of my service records, the common thread across nearly all denials was a "lack of diagnosis". I had also tested positive for RA so they were able to apply that to anything else that I claimed. I was being treated for all of these issues but apparently none were diagnosed? I was amazed one arm of the VA could conclude I met the criteria while the disability governing body could not. I brought this up to a doctor at the VA Hospital and he explained they treat symptoms and do not diagnose! I thought to myself this ultimately would make it impossible to ever be granted anything!! This seemed to defy sanity that one department of the VA was demanding diagnosis and the hospitals were saying they could not be provide any! It is very apparent to me the hospital staff has been groomed to very carefully stay away from the issue of Gulf War Illness. Every time I bring it up to this day, I have never been provided any written or even oral connection from the Hospital to Gulf War Illness. It was finally eluded to me in confidence that hospital staff could get into trouble for referencing Gulf War Illness in their treatment records and that they could not provide that nexus.

With this apparent and deliberate conflict of my interests for my VA Doctors to provide me the diagnosis I needed, I ultimately decided to leave the VA and go to a third party provider. I applied for copies of all of my medical records from the VA and traveled with them at my own very significant expense to the Mayo Clinic in Rochester MN for some real answers. I got a hotel and stayed there for three days in hopes of finally finding out what was so wrong with me.

Within three days, YES ONLY THREE DAYS I had the following diagnosis. This is something I have been unable to get at the VA in the four years I have been going there for treatment.

DIAGNOSES #1 Rheumatoid arthritis #2 Bilateral peroneal tendinopathy #3 Subpatellar degenerative arthritis of the left foot #4 Chronic fatigue, fibromyalgia #5 Gastroesophageal reflux disease #6 Chronic diarrhea #7 Prior chronic lower abdominal pain #8 Major depressive disorder, recurrent, moderate symptoms #9 Obstructive sleep apnea #11 Insomnia

So now in addition to the War Related Illness Center, I have diagnosis of all of the above from the Mayo Clinic. Clearly a connection right?? WRONG. While I considered this the smoking gun evidence I needed, I have still have not been awarded any connected disability to this day. ZERO PERCENT.

I have since resumed my treatment at the VA. I was told from my VSO there is approximately a two year wait before my appeal will even be opened. I have heard more recently that this wait is now up to four years. Over the last ten years I have lost two jobs and have lost my home and land due to bankruptcy. We have had to move twice and change schools which was really tough for my kids. I feel like I am on the verge of losing another job and I am afraid I can't rebuild things again. I am very fortunate to work from home where I have been able to hide and disguise my fatigue and sleep from my employer. My prayer is that I am granted some partial disability (50%+) so I can be honest with my employer and try to reduce my hours to accommodate the severe fatigue.

My VA psychologist told me Wednesday that it was an awful long time to hold onto life by my fingernails and I agreed. I have put a belt around my next twice and told my Doctor Wednesday that I would blow my brains out if I am denied again. 22 per day don't kill themselves because of PTSD-it's for being continually denied and called a liar by the administration that is supposed to be helping us. Veteran's and particularly those of war like me look at life very differently than most. If I have no hope- I will not continue to be a burden on myself, family, or country. I will however do my best to let them know I was destroyed by the Veterans Administration.

BRAIN CANCER (Not yet presumptive) - Missouri

My husband passed away from Glioblastoma Brain Cancer stage 4, three Brain tumors on March 21, 2013. He was diagnosed on January 20, 2013 with the tumors. Although this is not a presumptive, this is to be examined on a case by case bases. The claims examiner is to evaluate the available evidence to determine if it is at least likely that the Veteran's Brain Cancer is related to his or hers exposure to environmental hazards while Serving in the Gulf War.

Environmental hazards include but are not limited to reports of chemical alarms sounding of in Saudi Arabia as early as Jan 1991 and Sabotage of Kuwait Oil Wells in Jan 1991.

I have provided the Veterans Affairs Office and claims examiner over 59 medical files for review, However, the Denial determined by the V. A. Compensation claim examiner was denied with a review of only TWO medical files. I must say I have felt like a dog and pony show jumping through Circus hoops chasing down medical records, faxing. Following up, hand delivering notices. The V.A. faxed a small Death Certificate that was not legible and I had to hand carry the document to the Physicians and Providers. This did stir up much emotion, to say the least.

I reside in Missouri, a small town close to Whiteman Air Force Base. I laid him to rest on our Wedding Anniversary. The most precious gift I could give him, His Military Honors.

My husband suffered with many illnesses for over nine years prior to the Glioblastoma Brain Cancer, some would have been presumptive, the headaches, undiagnosed neurological disorder, irritable bowel syndrome, degenerative disc disease, many surgeries. He had seven shots in his hands every four months. He immediately went to the V.A. and was put on the Gulf War Registry when his illnesses first started in 2002. We never ever thought he would pass away. It all happened so fast. I didn't have time to process anything. I lost the Love of my life. I was mentally and completely broken. I went to Therapy, eventually was treated with in- patient therapy as the Loss was so great I couldn't go on with my life. I never thought of contacting the VA until a little over a year of his passing. I made the funeral arrangements and paid for the marker myself. I wasn't aware he could be laid to rest in the National Cemetery just 20 minutes away with a Proper Military Marker. Although I Love the marker I purchased, I feel a bit cheated that His Air Force isn't displayed. I called the VA after getting my Gulf War Newsletter, to tell them in case they were keeping track and they told me to file a claim. I filed in July 2014. I provided so much medical evidence and proof, there is no way any Medical person could deny this. I am a common housewife and I can see the evidence clear as day. I have had two denials. I am currently collecting more Medical Evidence. I was asked to get Buddy Letters. Now that's impossible. The government admits the exposure, admits it causes Cancer of the Brain, yet throws ridiculous and impossible task on the Surviving Spouse. I can't ask my husband who his Buddies were now can I ? The ongoing fight for Justice, I am HIS VOICE is a Daily struggle for me. I have panic attacks, I want to give up at times. Then I think about Him. His Strength. His Love for me. He fought to stay with me when he was suffering because I was crying and weeping and couldn't let him go.

Now it's my turn to fight for Him.

He wanted to take care of His Wife. He fought hard on His Death Bed for me. Now it's time for me to fight for him. I am His voice. May Justice and Truth Prevail for Our Hero's.

Statements For The Record

RONALD E. BROWN

Thank you, Chairman Bergman, Bost, Ranking Members Kuster, Esty all other members of the House Veterans' Affairs Subcommittee on Oversight and Investiga-

tions and Disability Assistance and Memorial Affairs. I thank you for holding this joint investigative hearing on the VA's Disability Claim Process with Respect to Gulf War Illness claims.

My name is Ronald Brown; I'm President of the National Gulf War Resource Center (NGWRC). The NGWRC is a small 501 (c) (3) non-profit veteran service organization, which is comprised of sick Persian Gulf War veterans who volunteer our time to advocate for our fellow veterans suffering from the complexities of modern warfare. We specialize in Gulf War Illness claims, we work with veterans to educate and assist them in the claims process. We also work with policy makers inside the VA, to accomplish two goals: first, to insure clinicians are better trained about conditions facing this group of veterans to insure the veterans receive the best health care possible. econdly, we are working to address and correct issues affecting this group of veterans, such as the high denial rate of Gulf War illness related claims.

We, the NGWRC have been working on addressing problems within the Gulf War Illness-related disability claim process with senior VA leadership for over the past three years. Everything in this GAO report has been addressed, corrective recommendations have been offered, but corrective action promised by the VA clearly wasn't carried out. I'm left scratching my head on exactly what has been accomplished, Our brain cancer presumptive has come to a standstill, those affected veterans and their families still can't obtain service connection, Gulf War presumptive claims are still denied at 80% plus rate, Examiners are still not trained on Gulf War related C&P exams. Adjudicators from around the country are poorly trained on Gulf War Illness-related presumptive conditions; the priority is to clear the claims backlog, causing many wrongfully denied veterans to wait years for a long drawn out appeals process.

After last year's hearing (PERSIAN GULF WAR: An Assessment OF VA's Disability Claim Process with Respect to Gulf War Illness) we was contacted by the Government Accountability Office (GAO) concerning an investigation Congressman Coffman had initiated on Gulf War claims. We provided data the Veterans Benefit Administration (VBA) had shared with us on these claims to GAO representative Nora Boretti. This data Ssuggested to us that the VBA has a serious problem with presumptive Gulf War Illness claims. The data provided Gulf War presumptive claims denial and approval rates from 2001–2017. In addition to the VBA data, we also provided actual blacked out presumptive condition claims that had been wrongfully denied. These claims had actual language the VBA used in its denial, and showed that the examiners and adjudicators had failed to follow statue, regulations (38 CFR § 3.317), and VA procedures. With each claim, we also provided blacked out medical evidence that proved that the veteran suffered from a medically unexplained chronic multisymptom illness. We also provided C&P exams, some in which the examiner failed to follow the guidance in the notice to examiners and provided an unnecessary medical opinion which caused the claim to be denied. Prior to providing these claim examples to the GAO, we first highlighted the errors and sent them to senior VBA leadership, who had them reviewed by VBA's quality control (Star Team) and the decisions had been overturned.

As previously stated, the NGWRC has been working to address the problems adjudicating Gulf War Illness-related disability claims for over three years. One of our first meetings was with Under Secretary Allison Hickey which led to a special focus review Gulf War Illness-related disability claims. VBA was instructed to randomly pull a statistical sample from claims dated 2011–2015 and have the Star Team review them. The findings of this Special focus review follows:

Special focus review overview:

During the period of August through December 2015, Compensation Service (the Quality Review staff) conducted a special focus review (SFR) of Gulf War (GW) cases. This review was the result of a meeting that took place on August 17th, 2015 with Under Secretary for Benefits, Allison Hickey; Tom Murphy, Director of Compensation Service; and Brad Flohr, Senior Advisor, Compensation Service, along with Ron Brown, President, National Gulf War Resource Center. It was noted that the National Gulf War Resource Center had numbers that reflected GW cases were not being decided correctly. From this meeting, a decision was made to have Compensation Service (the Quality Review staff) do a SFR on GW claims that were denied.

This review involved Veterans of the earlier Gulf War period that served between August 1990 and July 1991.

A total of 311 cases from the first two quarters of Fiscal Year 2015 were reviewed. Although some of these cases included claims for other disabilities that were not related to Gulf War, this review was restricted to the Gulf War related illnesses on each claim. The findings below are presented based on a claim based review. This

means that if an error was found with a specific issue denied, the entire case was erroneous.

FINDINGS:

Of the 311 cases reviewed, 291 were properly denied, and 20 were improperly denied. This corresponds to a 94% accuracy rate within our sample.

The VBA testified as to the special focus review findings at last year's hearing. After the hearing we (NGWRC) received the special focus review findings from the VBA. After reviewing the findings we determined that the VBA had not done the review as was agreed upon in the meeting with Under Secretary Allison Hickey, only claims from the first two quarters of Fiscal year 2015 were reviewed instead of claims from Fiscal years 2010–2015 as agreed upon. We contacted Secretary Bob McDonald who instructed the VBA to do a second Special focus review in which claims from Fiscal years 2011–2015 would be reviewed. The VBA drew 111 less claims than what was agreed upon (311) in this second special focus review. The findings are listed below:

Gulf War Special Focus Review

BACKGROUND

During December 2015 Compensation Service Quality Assurance Staff performed a special focus review of Gulf War (GW) denied claims. This review was the result of a meeting between the Under Secretary for Benefits (USB) and the President of the National Gulf War Resource Center. The National Gulf War Resource Center had data that reflected GW cases were being prematurely denied. The USB agreed to have Compensation Service Quality Assurance staff perform a special focus review of denied GW claims.

The initial review conducted during December 2015 involved Veterans of the earlier Gulf War period who served between August 1990 and July 1991. A total of 311 denied GW claims from the first two quarters of fiscal year 2015 were reviewed. The review was restricted to GW related illnesses. The review was not restricted to denials of claims for medically unexplained chronic multisymptom illnesses (MUCMIs). The December 2015 review resulted in an accuracy rate of 94%. The Gulf War Resource Center questioned why this review was not limited to denied claims for service connection for MUCMIs. They also questioned why the review only included claims denied during the first two quarters of fiscal year 2015. The GW Resource Center stated their data showed the prematurely denied claims were for service connection for MUCMIs and they understood Compensation Service would do a special focus review specific to denial of GW claims for service connection for MUCMIs only. Subsequently, Compensation Service agreed to do another review restricted to looking at denied GW claims for MUCMIs across FY11 through FY14.

Based upon the findings of the GW special focus review in December 2015, national training on GW claims processing was provided to all field offices in June 2016.

OVERVIEW

A second special focus review was completed by the Quality Assurance staff during the month of September 2016. The cases reviewed were specific to denied claims for service connection for MUCMIs, specifically chronic fatigue syndrome (CFS), fibromyalgia, and irritable bowel syndrome (IBS) as well as functional gastrointestinal disorders) under 38 CFR 3.317(a)(2)(B). A total of 200 cases from fiscal years 2011 through 2014 (50 cases from each year) were requested for review. One of the 200 cases could not be located after a thorough search. There were no documents uploaded into the Veterans Benefits Management System (VBMS) for this case; so a review could not be performed. Therefore, the total number of decisions reviewed for this special focus review was 199.

FINDINGS

Of the 199 cases reviewed, 178 decisions were correct, and 21 decisions were prematurely denied. This corresponds to an 89% accuracy rate within the sample. As stated above 50 cases from each fiscal year (FY11, FY12, FY13, and FY14) were reviewed. There was not much difference in the percentage of cases that were denied properly across the fiscal years reviewed.

- FY11: 44 correct with 6 prematurely denied.
- FY12: 43 correct with 7 prematurely denied.
- FY13: 47 correct with 2 prematurely denied.
- FY14: 44 correct with 6 prematurely denied.

The reason for the premature denials is shown below:

- 6 errors cited because a decision was made based on an insufficient exam.
- 5 errors cited for failure to request the proper VA exam or DBQ with the required verbiage to the examiner.
- 4 errors cited for failure to obtain a VA exam.
- 6 errors cited for denying the claim when evidence showed the disability persisted for 6 months and service connection was warranted.

Of the 21 errors cited, 15 were related to the exam process.

In the process of determining whether the denials reviewed were appropriate, the reason for denial shown on the decision code sheet was recorded. It was found that 88% of these cases were coded as not incurred/caused by service, 9% were coded as no diagnosis and 3% were coded as not established by presumption.

It must be noted that there are a limited number of reasons for denial populated in VBMS-R. These reasons for denial have no bearing on whether or not service connection was considered under the Code of Federal Regulations that covers compensation for certain disabilities occurring during the Persian Gulf War (38 CFR 3.317). Rather, the claimed GW disabilities are identified by the "Environmental Hazard in the Gulf War/ Undiagnosed Illness" special issue and the "88" diagnostic code prefix on the code sheet.

It is imperative that the reviewer fully review the narrative in these decisions to ascertain whether service connection was properly considered under 38 CFR 3.317.

SUMMARY

The accuracy rate of this GW special focus review with an emphasis on MUCMIs is 89% for the claims reviewed from FY11 through FY14. The problem areas found were related to improper exam requests, insufficient exam reports, and improper denials of diagnosed disabilities. No specific trends were identified by fiscal year.

RECOMMENDATIONS

Based on a careful analysis of the data gleaned from this GW special focused review conducted by Compensation Service Quality Assurance staff, the recommendation is made to administer a consistency study on GW claims to all regional offices to validate the June 2016 GW training which covered the GW claim process, when to order a GW exam and the proper language that should be included in the exam request. The consistency study is scheduled to be conducted during the 2nd Quarter of FY 17.

Compensation Service, Quality Assurance
October 2016

From the fairly small numbers of veterans the NGWRC has helped with the claims process, it is abundantly clear that the VBA has a systemic problem with Gulf War Illness-related disability claims. Adjudicators are not well trained, the emphasis isn't on accuracy; rather, on clearing the backlog of claims. The statue, VA regulation and VA procedure (M21–1 manual) often aren't followed. To complicate the issue C&P examiners aren't properly trained on these types of claims, despite VAs insistence that they are, this GAO report found the examiners training on

these types of claims is optional, not mandatory as we were led to believe, and only about 10% of VA's examiners have completed the optional Gulf war Illness course. In the claims we have reviewed, got the VBA to overturn, and provided to the GAO (15 - 20 claims), it is abundantly clear that most examiners who preform Gulf War exams don't understand guidance in the Notice to Examiners in Southwest Asia claims (below) that they are to provide a medical statement, and not a medical opinion about service connection for disability type (1) an undiagnosed illness, and (2) a diagnosable but medically unexplained chronic multi-symptom illness. As pointed out in this GAO report, adjudicators often fail to recognize that the examiner has provided an unnecessary medical opinion concerning service connection, and the veterans are wrongfully denied.

j. Notice to Examiners in Southwest Asia Claims

Please examine this Veteran, who has service in Southwest Asia, for any chronic disability pattern. Please review the claims folder as part of your evaluation and state, with your findings, that it was reviewed. The Veteran has claimed a disability pattern related to [insert symptoms described by Veteran].

Please provide a medical statement explaining whether the Veteran's disability pattern is:

(1) an undiagnosed illness

(2) a diagnosable but medically unexplained chronic multi-symptom illness of unknown etiology

(3) a diagnosable chronic multi-symptom illness with a partially explained etiology, or

(4) a disease with a clear and specific etiology and diagnosis.

If, after examining the Veteran and reviewing the claims file, you determine that the Veteran's disability pattern is either (1) an undiagnosed illness; or (2) a diagnosable but medically unexplained chronic multisymptom illness of unknown etiology, then no medical opinion or rationale is required as these conditions are presumed to be caused by service in the Southwest Asia theater of operations.

If, after examining the Veteran and reviewing the claims file, you determine that the Veteran's disability pattern is either (3) a diagnosable chronic multi-symptom illness with a partially explained etiology, or (4) a disease with a clear and specific etiology and diagnosis, then please provide a medical opinion, with supporting rational, as to whether it is "at least as likely as not" that the disability pattern or diagnosed disease is related to a specific exposure event experienced by the Veteran during service in Southwest Asia.

Many of veterans that we assisted in the appeals process were wrongfully denied because the Regional Benefits office imposed a nexus requirement. The decision letter stated that the claim was denied because "your service treatment records are silent for complaints, treatment, or a diagnosis for your claimed condition of [Fibromyalgia, Chronic Fatigue Syndrome or Irritable Bowel Syndrome]". These types of denials are direct violations of U.S.C. 38 § 1118 which states that these conditions (diagnosable but medically unexplained chronic multi-symptom illnesses) are presumptions of service connection associated with service in the Southwest Asia theater of operations and "shall be considered to have been incurred in or aggravated by service notwithstanding that there is no record of evidence of such illness during the period of such service." The United States Court of Appeals for Veterans Claims upheld the statue when it ruled in the case Gutierrez v. Principi, 19 Vet.App.1 (2004), that a Gulf War veteran does not have to prove any link to the veteran's service and the VA cannot impose a nexus requirement under the provisions of 38 CFR § 3.317. The Courts ruling follows:

Gutierrez v. Principi:

"In this case, the Board finds that the veteran's initial claims for VA compensation, the initial VA evaluations, and the veteran's initial statements to the VA following his discharge from active service (in which he fails to mention any disability associated with joint and muscle pain, fatigue, dizziness, decreased vision, memory loss, and loss of concentration) provides affirmative evidence that the undiagnosed illnesses were not incurred during his active military service. It further fundamentally undermines the veteran's credibility in that it is his central contention that he has had these disabilities over an extended period following his discharge from service. If this was the case, the Board finds no rational reason to believe that there would not be at least some evidence or indications in support of the veteran's contention or that the veteran would not have noted these difficulties earlier or during

his initial examinations. The Board finds that these facts do not support the veteran's case. The only evidence of record before the Board specifically linking the veteran's current alleged disabilities to his service or to Gulf War syndrome consist[s] of the veteran's own evidentiary assertions. Such evidence is of limited probative weight. While the veteran is competent to describe manifestations perceivable to a lay party, he is not competent to diagnose himself with disabilities and then associate those disabilities with his active service or with any form of Persian Gulf syndrome R. at 14–15 (emphasis added). If this were a claim for direct service connection, a nexus between Mr. Gutierrez's disabilities and his period of active service would be required. See Caluza, supra. In this case, however, evidence is not required "specifically linking" Mr. Gutierrez's disabilities to his service or the Gulf War. See Brock, supra. Congress has decided as a matter of policy, stemming at least in part from difficulty of proof, that, even though a Persian Gulf War veteran's symptom may not at this time be attributed to a specific disease, the symptoms may nonetheless be related to conditions in the Southwest Asia theater of operations and, for that reason, are presumed to be service connected. See 38 U.S.C. 1117; 38 C.F.R. 3.317 (a)(1)(i). Thus, Mr. Gutierrez was not required to provide evidence linking his current conditions to events during service and the Board erred by imposing such a nexus requirement. Further, as stated above, section 1117 and 3.317 require that undiagnosed illnesses become manifest to a degree of 10% or more during the presumption period that ends on December 31, 2006. See 38 C.F.R. 3.317(a)(1)(i).

Accordingly, the Board erred by failing to account for that, as well as the other factors discussed below, in determining that Mr. Gutierrez's complaints were not credible because he had not sought treatment for these conditions earlier or did not complain about them during his initial medical examinations. The Board also found that, although Mr. Gutierrez had complained of joint and muscle pain, fatigue, dizziness, and loss of concentration, the objective medical evidence failed to show any such disabilities. R. at 15. The evidence of record reveals that Mr. Gutierrez consistently complained during VA medical examinations about fatigue, muscle and joint pain, neurologic signs or symptoms (loss of concentration and memory), and sleep disturbances. See R. at 98, 106–108,125–28, 228–29, 329, 348–53, 423, 426–27. These symptoms are specifically identified by VA in its own regulation as possible manifestations of an undiagnosed illness in Gulf War veterans. See 38 C.F.R. 3.317(b)."

Another troubling and frequent problem we see in Gulf War Illness-related disability claims is that often the examiner, usually a Nurse Practitioner, will override the diagnoses from a medical specialist. Medical specialists are the ones who have run all the necessary testing to rule out all other clinical diagnosis that could produce symptoms before they diagnose a CMI such as fibromyalgia. The specialist often is the one treating the veteran or at least advising the veteran's primary care provider. As recently as two weeks ago, we assisted a veteran whose claim for fibromyalgia and chronic fatigue Syndrome was denied because the examiner stated that the veteran's diagnosis wasn't confirmed by a specialist. Ironically the veteran was diagnosed by James N. Baraniuk, MD (Professor of Medicine, Division of Rheumatology, Immunology and Allergy, Director of the Chronic Pain and Fatigue Research Center, Georgetown University). Dr. Baraniuk is one of the nation's leading experts on disabilities occurring in Persian Gulf veterans.

We have also seen exams where the veterans have a clinical diagnosis of Fibromyalgia, Chronic Fatigue Syndrome, and Irritable Bowel Syndrome and the Adjudicator's try and lump the veteran's conditions under one rating even though all three conditions carry their own rating criteria in 38 CFR § 3.317. Generally this hurts the veteran as they are given a lower rating percentage.

After three years of trying to get the VA to correct issues with Gulf War Illness-related disability claims; I honestly feel that the only way to a viable fix is thru legislative action. I believe that Congress needs to reevaluate the statue; I don't think it was congressional intent for a process in which most Gulf War Illness-related disabled veterans are denied service connection for their illnesses. In the last hearing in March of 2016 Representative Kuster had mentioned that perhaps Congress needs to go back and look at the legislation they did to create Undiagnosed Illness and I agree I think this desperately needs to happen.

I also think that Congress needs to reevaluate USC 1117 and 1118. It is almost impossible to add presumptive conditions for Gulf war veterans in part because this stature requires positive proof concerning exposures. How's this possible, Gulf war veterans were exposed to a variety of environmental and chemical hazards, unlike our Vietnam veterans whose main exposure was herbicides? I honestly believe Congress needs reevaluate this legislation and change the positive proof wording to benefit of the doubt since there are so many exposure variables that will never be known.

Without, guidance from Congress, I do think that the VBA or VA will take action to address problems within the Gulf War Illness-related disability claim process. I say this because I have spent the last three years addressing the same issues identified in this GAO report with Senior VA, VBA and VHA leadership with very little to show for it. They have had 26 years to get this correct and it's still not even close. So, I honestly hope Congress can assist in providing legislative help for Gulf War veterans. Below are the same recommendations I provided at the last hearing, with a new recommendation highlighted in yellow.

Recommendations:

Have VA report back to Congress quarterly with the type of training being conducted and with proof the Gulf War medical and adjudicator training has indeed been done by all required VA employees. Make it mandatory and ongoing!!! ONE AND DONE TRAINING ABSOLUTLY HAS NOT WORKED ON GULF WAR MEDICAL AND AJUDICATOR TRAINING (NEW Recommendation).

Training. Training the front-line adjudicators concerning Gulf War illness related claims would be the most effective tool in solving the high denial rate of Gulf War illness related claims. ulf War illness related claims make up 29% of the current back log. his training would further serve to reduce the growing number of appeals. f the policy makers in the Central office are serious about fixing the high denial rates of Gulf War illness related claims, they need to ensure that each regional office around the country is doing mandatory training. The upper management in the Central office should direct the directors of each Regional Benefits Office to ensure their front-line adjudicators are using the M21–1 manual. his manual provides the adjudicators all the references needed to accurately adjudicate claims. eferences in this manual include U.S. code, VA Regulation (CFR) and related U.S. Court of Appeals for Veterans' Claims cases. his manual is an excellent tool if used.

Transparency, the VBA must continue to provide Veteran Service Organizations with data on these types of claims. his ensures that VSO organizations can monitor and keep tract of denial and approval rates as well as provide critical information to the veterans they represent. Have VA report back to Congress quarterly with the type of training being conducted and with proof the Gulf War medical and adjudicator training has indeed been done by all required VA employees.

In closing, below is the Data VBA furnished the NGWRC on Gulf War presumptive claims from Fiscal years 2002–2017 This data covers more years than the GAO's report and paints an even darker picture of the systemic problems VA has with Gulf War presumptive claims!!

UDX and CMI Decsions | **UDX Issue Denial Reasons** | **CMI Issue Denial Reas**

UDX = Undiagnosed Illness, defined as diagnostic codes containing 88xx in the hyphenated code OR has a GW1 special issue basis type and excludes CMI diagnostic codes in the primary code/hyphenated code . CMI = Chronic Multisymptom Illness has the same code structure as UDX 88XX in the hyphenated code but fibromyalgia 5025, IBS 7319, and chronic fatigue syndrome 6354 is located in the primary code OR has a CMI condition with GW special issue.

UDX and CMI

	Issues		Veterans		Total	
FY	NOTSVCCON	SVCCONNCTED	NOTSVCCON	SVCCONNCTED	ISSUES	VETERANS
2002	19	2	8	2	21	10
2003	5,189	415	1,891	330	5,604	2,085
2004	8,122	963	3,139	730	9,085	3,609
2005	9,367	951	4,001	727	10,318	4,478
2006	9,747	984	4,308	708	10,731	4,765
2007	12,571	1,353	5,185	915	13,924	5,779
2008	15,143	1,534	6,001	1,026	16,677	6,676
2009	19,961	1,991	7,376	1,267	21,952	8,181
2010	26,216	3,274	9,416	2,072	29,490	10,682
2011	25,021	3,904	9,128	2,530	28,925	10,663
2012	32,368	5,731	11,489	3,622	38,099	13,699
2013	33,331	6,152	13,065	4,184	39,483	15,751
2014	25,580	4,199	10,672	3,146	29,779	12,866
2015	38,041	5,583	15,505	4,177	43,624	18,327
2016	38,015	5,831	15,477	4,594	43,846	18,681
FYTD 2017	15,567	2,663	6,819	2,145	18,230	8,403

CMI

	Issues		Veterans		Total	
FY	NOTSVCCON	SVCCONNCTED	NOTSVCCON	SVCCONNCTED	ISSUES	VETERANS
2002	3	2	3	2	5	5
2003	1,070	226	866	209	1,296	1,044
2004	1,904	575	1,534	507	2,479	1,967
2005	2,358	526	1,961	482	2,884	2,355
2006	2,579	534	2,025	469	3,113	2,398
2007	3,290	747	2,405	599	4,037	2,904
2008	3,947	903	2,779	701	4,850	3,355
2009	5,339	1,185	3,556	895	6,524	4,278
2010	7,168	1,990	4,654	1,484	9,158	5,818
2011	6,770	2,352	4,545	1,817	9,122	5,984
2012	9,560	3,344	6,097	2,556	12,904	8,081
2013	10,280	3,431	7,184	2,877	13,711	9,468
2014	8,270	2,437	5,857	2,180	10,707	7,625
2015	11,312	3,297	8,066	3,001	14,609	10,489
2016	10,952	3,598	7,942	3,277	14,550	10,676
FYTD 2017	4,894	1,733	3,677	1,577	6,627	5,009
			63,151	22,633		

UDX

	Issues		Veterans		Total	
FY	NOTSVCCON	SVCCONNCTED	NOTSVCCON	SVCCONNCTED	ISSUES	VETERANS
2002	16		7		16	7
2003	4,119	190	1,530	143	4,309	1,611
2004	6,218	388	2,417	274	6,606	2,598
2005	7,009	425	2,922	289	7,434	3,111
2006	7,168	450	3,078	287	7,618	3,274
2007	9,281	606	3,752	363	9,887	3,998
2008	11,196	631	4,389	384	11,827	4,657
2009	14,622	806	5,405	438	15,428	5,691
2010	19,048	1,284	6,895	717	20,332	7,334
2011	18,251	1,552	6,704	892	19,803	7,242
2012	22,808	2,389	8,166	1,364	25,197	9,013
2013	23,051	2,721	9,214	1,610	25,772	10,253
2014	17,310	1,762	7,390	1,171	19,072	8,226
2015	26,729	2,286	11,132	1,462	29,015	12,124
2016	27,063	2,233	10,971	1,567	29,296	12,091
FYTD 2017	10,673	930	4,684	669	11,603	5,196
			88,649	11,630		

UDX and CMI Decsions | UDX Issue Denial Reasons | CMI Issue Denial Reasons

ISSUES	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	Grand Total
38 CFR 3.383 (Paired Extremity)			1									1	1	1		1	5
Constitutional/Developmental Abnormality				1	2	3		4	9	2	8	11	3	2	1	2	48
No Diagnosis		109	246	423	468	605	620	937	1,369	1,363	2,573	3,485	3,308	4,755	4,520	2,162	26,943
Not Aggravated by Service		1	1	1	2	7	8	2	4	5	9	15	10	19	12	2	98
Not Established by Presumption	1	282	492	548	619	773	929	1,330	1,807	1,853	2,355	2,416	1,731	2,181	2,265	983	20,565
Not In Country		1	5	6	4	4	5	10	20	22	15	22	23	10	4		151
Not in Line of Duty		1	1					1	2			1	3	1	9	1	20
Not Incurred/Caused by Service	2	675	1,154	1,378	1,482	1,894	2,374	3,040	3,928	3,507	4,574	4,304	3,167	4,269	4,057	1,711	41,516
Not Secondary		1	4	1	2	4	11	15	29	18	26	25	24	73	84	32	149
Hearing Normal for VA Purposes														1			1
Grand Total	3	1070	1904	2358	2579	3290	3947	5339	7168	6770	9560	10280	8270	11312	10952	4894	89696

Done Results 2017-4421 3-15-17 includes Special Issues GW Presumpt

UDX and CMI Decsions | UDX Issue Denial Reasons | CMI Issue Denial Reasons

ssues	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	Grand Total
8 CFR 3.383 (Paired xtremity)						1						2	1	1	1		6
'onstitutional/Development bnormality		25	25	28	30	42	49	58	68	69	68	75	53	64	53	30	737
Iearing Normal for VA urposes		4	2	6	6	9	8	21	16	10	23	30	33	35	44	16	263
o Diagnosis		268	406	518	600	791	987	1,316	1,707	1,757	2,645	3,581	3,149	5,393	5,232	2,156	30,506
ot Aggravated by Service		7	20	21	40	36	55	51	64	67	107	144	114	205	223	78	1,232
ot Established by resumption	1	1,111	1,614	1,836	1,864	2,424	2,883	3,655	4,956	4,860	5,812	5,706	4,484	5,986	6,177	2,355	55,724
ot In Country		1	4	7	25	5	18	15	22	15	28	39	15	10	3	2	209
ot in Line of Duty		3	2	2	3	1	4	5	4	2	3	5	14	12	26	12	98
ot Incurred/Caused by ervice	15	2,685	4,136	4,570	4,579	5,938	7,159	9,442	12,083	11,370	13,971	13,307	9,299	14,769	14,895	5,888	134,106
ot Secondary		14	9	19	21	33	32	59	128	100	148	162	148	254	409	136	1,672
ot Well Grounded		1		2		1	1			1	3						9
rand Total	16	4119	6218	7009	7168	9251	11196	14622	19048	18253	22808	23051	17310	26729	27063	10673	224562

Respectfully,

Ronald E. Brown
President
National Gulf War Resource Center

Respectfully,

Ronald E. Brown
President
National Gulf War Resource Center

Paul Sullivan

Thank you, Chairmen Bergman and Bost, Ranking Members Kuster and Esty, and Members of both Subcommittees for your support of Gulf War Veterans and for holding today's hearing about the processing of Gulf War illness (GWI) disability compensation claims administered by the U.S. Department of Veterans Affairs (VA).

My name is Paul Sullivan, and I am a disabled Veteran who served as a cavalry scout in the Army's 1st Armored Division during the first ground invasion of Iraq and Kuwait during the 1990 - 1991 Gulf War. I'm also the Director of Veteran Outreach at Bergmann & Moore, LLC, a national law firm based in Maryland representing Veterans with claim appeals before VA, including the Board of Veterans Appeals (Board) and the Court of Appeals for Veterans Claims (Court).

Since becoming ill in the war zone and returning home, I've dedicated my professional life to assisting fellow Veterans. For more than two decades, I continue working closely with Veterans who were denied VA benefits, including fellow ill Gulf War Veterans.

Since my first appearance on July 16, 1998, I've had the honor of testifying several times before the House and Senate with the goal of improving government policies regarding Veterans, including several hearings on GWI claims. My statement today again focuses on government policies and practices.

However, there is an important addition in my statement for this hearing. For the first time, I am providing Congress with a description of VA errors, delays, inadequate exams, lost records, and retaliation. I am still waiting on VA to decide my GWI claim originally filed on July 28, 1992. It remains deferred and undecided at a regional office.

The Subcommittees are rightfully concerned to focus on GWI claims. Congress acted properly in 1994, 1998, 2001, and 2010 with new laws to assist Gulf War Vet-

erans with obtaining VA service connection in order to obtain free VA treatment (38 USC 1117 and 1118). Congress acted wisely and carefully based on the urgent needs of hundreds of thousands of ill Gulf War Veterans who reported ailments associated with toxic exposures after deploying to Southwest Asia during Desert Shield and Desert Storm.

Many fellow Gulf War Veterans and family members worked diligently with Congress for years to help pass the laws because VA research indicates as many as 250,000 Gulf War Veterans remain ill. Your continued involvement is welcome and appreciated.

With some exceptions, in order for Veterans to obtain free treatment at a VA medical center, Veterans need to be granted service connection via VA's highly complex and often adversarial disability compensation claim process. One of the most important exceptions is a law providing free healthcare for Veterans who deployed to a war zone for five years after discharge from active duty (38 USC 1710). The law, enacted as part of the landmark "Persian Gulf Veterans Act of 1998," was expanded by Congress from an initial two years to five years in 2008. Hundreds of thousands of Veterans who deployed to our current conflicts in and around Iraq and Afghanistan have used this new VA healthcare benefit, and I thank Congress for passing and expanding the law.

GAO FINDINGS

Today's hearing was prompted by the new report issued by the U.S. Government Accountability Office (GAO) into VA's mishandling of GWI disability compensation claims ("Gulf War Illness: Improvements Needed for VA to Better Understand, Process, and Communicate Decisions on Claims," GAO–17–511, June 2017). Bergmann & Moore thanks Congress for requesting the GAO investigation into VA's processing GWI claims. However, GAO's conclusions raise serious concerns for Congress to address:

- **Hundreds of thousands of Gulf War Veterans remain ill:** "Nearly 30 years after the Gulf War conflicts began, hundreds of thousands of veterans continue to experience chronic medical conditions that may be related to a host of hazardous exposures they faced while serving our country.."
- **Gulf War Veterans were exposed to toxins:** According to the GAO, Gulf War Veterans were exposed to "pesticides, smoke from oil well fires, and depleted uranium that could be linked to their medical conditions." Other hazardous exposures include pyridostigmine bromide chemical warfare agent pretreatment pills and chemical warfare agents such as sarin and mustard gas.
- **VA examiners lack training:** Only 10 percent of VA medical professionals conducting Compensation and Pension (C&P) exams for Veterans seeking service connection for GWI were trained using VA's voluntary 90-minute video.
- **VA examiners are confused:** VA medical professionals conducting C&P exams for GWI expressed "confusion" on how to conduct and report a GWI C&P exam.
- **VA lacks a case definition:** VA has no case definition for GWI, and that hampers C&P exams, rating decisions, and treatment.
- **VA remains fixated on identifying a diagnosis to make it fit:** Some VA C&P examiners told GAO that "they could nearly always attribute a Veteran's symptoms to a diagnosable illness, which would mean the Veteran does not qualify for benefits under the undiagnosed illness presumptive category." VA's action arguable defeats the purpose as it circumvents the law.
- **VA issues unnecessary opinions:** "According to several [VA] claim rating staff we interviewed, [VA] medical examiners sometimes provide a medical opinion related to service connection when one is not necessary because the Veteran has a presumptive condition." Untrained C&P examiners thus "inadvertently deny" a claim that should be presumptively granted (Gutierrez v. Principi, 2004).
- **VA issues incomplete rating decisions:** When VA issued a Gulf War Veteran a GWI rating decision, VA often did not include key information on why it was denied. For example, when VA issued a Veteran a claim rating decision, VA may not have listed or considered both direct and presumptive service connection. VA's lack of clarity causes Veterans frustration when trying to determine the next step in the claim process, such as appealing VA's rating decision.

According to GAO, the impact of VA's challenges cause severe and adverse consequences for ill Gulf War Veterans seeking service connection and healthcare:

- **VA forces Gulf War Veterans to wait longer:** VA takes four months longer to process a Gulf War illness claim than other claims because GWI claims involve multiple and complex medical conditions.
- **VA denies Gulf War Veteran claims more often:**

-VA's Alaska regional office denied all GWI claims.

-VA granted GWI issues "about 3 times lower than all other medical conditions."

-VA granted service connection to only 10 percent of the Gulf War claims under Undiagnosed Illness in 2015 (the 1994 law, 38 USC 1117).

-VA granted service connection to only 22 percent of the Gulf War claims under chronic multisymptom illness in 2015 (the 2001 law, 38 USC 1118).

While the GWI laws have provided tens of thousands of Gulf War Veterans with some relief and access to VA medical care and disability compensation, an unknown number still face unreasonable obstacles before obtaining VA treatment and benefits. GAO estimated the number of completed yet unreported GWI decisions to be in the tens of thousands because of underreporting "due to unclear guidance and inconsistent data entry over time" by VA.

The bottom line for ill Gulf War Veterans is that we are often prevented from obtaining the VA treatment and benefits we earned and urgently need due to VA's problems confirmed by GAO. Thus, a large number of ill Gulf War Veterans continue suffering.

EXAMPLES OF VA CLAIM ERRORS

Bergmann & Moore, managed by former VA attorneys, has assisted several thousand Veterans with VA claim appeals over the past 14 years. Here are common VA errors in GWI claims identified by Bergmann & Moore that go beyond those identified by GAO.

- **War dates:** VA denied a Veteran's GWI claim based on deployment to Southwest Asia during 1992, implying the war had ended. VA should have granted the claim because the Gulf War continues and existing laws apply to Veterans deployed to Southwest Asia starting on August 2, 1990, and continuing through the present (38 USC 101(33)).
- **War locations:** VA denied a Veteran's claim based on service aboard a ship in the Persian Gulf, mistakenly believing the nearby body of water was not part of the war zone. VA should have granted the claim because the Persian Gulf is considered part of the geographic area of Southwest Asia (38 CFR 3.317(e)(2)). VA should update the definition of Southwest Asia so the tens of thousands of Veterans who deployed to Turkey, Syria, Israel, Afghanistan, and other locations since August 2, 1990, can rightfully obtain VA healthcare and benefits.
- **VA used the wrong DBQ:** VA denied a Veteran's claim because the C&P examiner relied upon one or more incorrect Disability Benefits Questionnaires (DBQ) to evaluate the Veteran's condition(s). VA should use the more appropriate GWI DBQ for GWI claims and VA should train staff to use it.

Some VA errors are simple to correct on appeal, such as knowing the correct dates and locations for the Gulf War. According to the GAO, other VA denials may require the Veteran to submit additional evidence.

However, some VA errors appear to be harmful to Veterans, such as using the wrong DBQ or taking unreasonable and unwarranted steps to diagnose GWI. The GAO report indicates that VA appears to be inappropriately developing evidence or providing an unfavorable nexus in order to deny a Veteran's GWI claim. VA's adverse actions are counter to what Congress intended and Court mandate (Mariano v. Principi, 2003).

In light of VA's high denial rate and errors, Bergmann & Moore encourages Veterans with situations similar to those listed above to consider appealing VA's rating decision. Veterans should seek an accredited representative to assist with filing a claim as well as when filing a Notice of Disagreement (Form 21–0958) or Substantive Appeal (Form 9).

VA USUALLY PERFORMS WELL IN OTHER AREAS

For nearly two decades, I testified in person several times in support of new laws designed to improve VA so our Veterans would receive timely and quality VA care and benefits. Congress listened and took decisive action. My statement today is the first time I have provided Congress with information about how VA maliciously and

incompetently mishandled my GWI claim for nearly a quarter century. My goal is for Congress to have a rare view into the extreme challenges Veterans face.

Before I begin describing my VA claim nightmare, allow me to compliment VA medical professionals. As a former project manager working at VA's central office here in Washington, DC, and as Veteran who receives all of my care at VA, treatment for routine conditions is exemplary. VA staff are usually polite, caring, and professional. Yet my observation is that they are overworked with too many patients and not enough time, especially in order to provide care for Veterans with complex conditions. Although VA physicians continue trying, VA remains unable to provide me with an effective treatment for my GWI.

Similarly, nearly all VA claims processors are doing the best they can under difficult circumstances. However, training, staffing, and oversight must improve at regional offices. VA regional offices should focus on quality rather than on speed and production quotas.

MY 25 YEAR VA CLAIM ODYSSEY

My VA disability claim odyssey began on July 28, 1992. I walked into a VA medical center for the first time and sought care because I was suffering from several serious medical conditions. The previous day, I called and asked VA what to do in order to receive care as an ill Gulf War Veteran. The VA clerk advised me to arrive early in the morning, bring my DD 214 discharge papers, and ask to see a physician.

Upon arrival at the VA medical center, VA refused to treat me. The VA clerk said I was not service connected and that I did not serve in the Gulf War. The clerk did not know that the military refers to the Gulf War combat zone as Southwest Asia. My DD214 confirmed I deployed to Southwest Asia and received the Southwest Asia Service Medal. The clerk insisted I was not in the Gulf War because my DD214 did not mention the Gulf War, Desert Shield, Desert Storm, Iraq, Kuwait, or Saudi Arabia. The clerk never mentioned the need to file and win a VA claim before receiving treatment.

A second VA employee who happened to walk by asked me if this was my first visit to a VA medical center. I said yes, and the second VA employee suggested I meet with someone who could explain how to file a claim and obtain VA healthcare. I then met a Veteran Service Organization (VSO) representative who explained VA's complex claim and healthcare rules. That day, the VSO and I filed my original claim, even though I was visibly suffering from a fever, sinusitis, migraine, erythromelalgia, and other conditions. Like other Veterans, I filed my VA claim in order to obtain VA medical care.

VA's poor handling of my claim could be summarized by saying, "if something could go wrong at VA, then it did." VA's significant mistakes processing my GWI claim mirror the VA errors identified by GAO's investigation. Here are examples:

- **VA transferred and lost my entire claim file:** After Congress passed the 1994 Gulf War illness benefits law, VA sought to consolidate all Gulf War claims at four VA regional offices. That didn't work out well. Then VA tried consolidating all GWI claims at a single VA regional office. That failed as well. VA's repeated transfers of my paper claim file resulted in my file disappearing between 1995 and 1999. My VSO advocate appealed and protested the transfer of my claim file to no avail. My medical conditions worsened, and my medical bills mounted. My paper records were eventually located by my VSO in 1999.
- **VA lost my C&P exams and medical records:** VA lost C&P exams and medical records needed to process my GWI claim. As a result, even when VA had my file, VA issued partial rating decisions without deciding my GWI conditions. VA deferred portions of my claim related to GWI in 1995, 1999, and 2000.
- **My VSO located my file and reported VA retaliation:** During 1998 and 1999, attorney William "Bill" Russo searched for my claim file for several months. At that time, Mr. Russo was the director of benefits at the Vietnam Veterans of America (VVA), my VSO advocate. He found parts of my file in four different VA regional offices. My file inexplicably contained newspaper clippings about me, records of other Veterans, and duplicate copies of my records. Missing from my file were C&P exams and other salient DoD, VA, and private medical records. After spending an entire day reconstructing my claim file, Mr. Russo told VA's regional office director the situation was the worst case of VA retaliation and mishandling of a claim he had ever seen. Mr. Russo would go on to become the Deputy Director of Regulations at VA's central office in Washington, DC. I thank Mr. Russo for his tenacious advocacy. He died in 2016.
- **VA used untrained C&P examiners:** In one example in 1992, a VA physician conducted an exam without asking me any health questions. In the ensuring

appeal, VA provided a new exam and granted the condition. In another example in April 2017, an untrained VA physician conducted a GWI C&P exam. The physician used the wrong DBQ, found a diagnosis, and provided a negative nexus opinion when none was required. This is exactly what GAO concluded was wrong with VA. The physician asked me to provide my military, VA, and private medical records because the physician had not reviewed them. In a related matter, VA sent me a letter asking me to call VA by a fixed due date for a GWI C&P exam. However, VA's letter was postmarked after the due date.

- **VA ignored key evidence:** When rating my claim in 1993, 1995, 1999, and 2000, VA regional offices ignored probative evidence from military, VA, and private doctors. For example, my military records show the onset of my GWI while deployed to Southwest Asia and Germany during 1991. In another example, a 1999 VA Gulf War registry exam linked my GWI to toxic exposures.
- **VA admitted CUE:** In April 2000, VA made an admission of a Clear and Unmistakable Error, or CUE, in a November 1999 VA rating decision. VA erroneously established an effective date of November 1999, instead of September 1991 (I filed my claim within one year of leaving Active Duty, so the effective date is retroactive to my discharge date). The silver lining in VA's April 2000 rating decision was that VA did grant some of my conditions and opened the door to VA treatment. The remaining dark cloud in VA's April 2000 rating decision was that VA again deferred my GWI claim for a third time.
- **VA's failed Gulf War registry exam:** During a Gulf War registry exam in 2017, the VA physician was unaware of any new Gulf War research or treatments. Furthermore, the physician, who regularly conducts GWI C&P exams, confided that VA provided no training for GWI C&P exams and that a supervisor issued orders to deny all GWI claims except in cases where the Veteran was diagnosed with fibromyalgia, chronic fatigue, or irritable bowel. The physician's comments confirm what the GAO reported. I wrote a letter and brought the physician's comments to the attention of the VA medical center's director, chief of staff, and C&P director. I have not yet received a reply.
- **Other malicious VA acts - inexplicable change of my address and release of my medical records:** VA changed my address in error to a location where I did not live. VA never explained how that happened. VA sabotaged a meeting with legislators by releasing my medical records without authorization. VA later apologized.
- **VA improperly cancelled my deferred Gulf War illness claim:** In the most egregious example of VA retaliation, VA improperly erased my deferred GWI claim from VA's computerized Pending Issue File (PIF) in September 2000. VA took action without notification or permission from my VVA advocate or me. Even though VA granted a portion of my claim and then deleted my claim from VA's electronic work queue, my GWI claim still remains pending and deferred because VA never decided it. I learned about VA's actions in July 2017 when VA provided me a copy of a VA letter dated September 2000 that contained hand written notes by VA employees improperly cancelling my deferred GWI claim.
- **My appeals were timely and written:** With the assistance of my advocate, all of my notices of disagreement and substantive appeals were timely and written. VA's actions described above are unacceptable and unconscionable. VA should have decided my pending and deferred claim at the regional office decades ago. My health continues worsening since 1991. The cost in my time and medical bills is staggering. I receive solace advocating for VA reform and assisting fellow Veterans. I am still waiting a VA rating decision from a regional office for my claim originally filed in July 1992, and in 25 years, my claim has never reached the Board or Court.

LOOKING FORWARD: SUGGESTED REFORMS

VA's concurrence with GAO represents a watershed step forward by VA in acknowledging and resolving the issue of tens of thousands of denied GWI claims. Bergmann & Moore agrees with GAO's recommendations. Specifically, VA agreed to begin mandatory VA training for medical professionals conducting GWI C&P exams, more detailed VA rating decisions provided to Veterans, and the development of a case definition for GWI.

Going beyond the GAO's recommendations, GWI disability compensation claim laws and regulations need an urgent overhaul. Congress and VA should take advantage of the disturbing new information about GWI claims in order to collaborate with VSOs and other stakeholders to improve claims processes so Veterans can receive prompt and quality VA care and compensation for service-connected conditions.

Congress should act swiftly based on the momentum created by the GAO report, VA's acknowledgement, and the testimony of advocates today. Any new legislation should provide for scientific research, medical treatment, training for claim processors at VA regional offices, training for claim examiners at VA medical facilities, an updated definition of Southwest Asia, and continued oversight through mandatory reporting of healthcare use and claim activity.

The most critical component of any new legislation remains VA's willingness to embrace change and understand the reasoning behind a new benefits law. In the case of ill Gulf War Veterans, the main route to free VA treatment and disability benefits comes after VA grants the Veteran service connection.

VA should work with VSOs so the training to implement any future laws and regulations meets the expectations of VA C&P examiners, VA claims processors, VSOs, and Veterans. As part of training VA claims processing staff about Gulf War illness claims, VA should share copies of VA's training materials with VSOs and Congress so that advocates, legislators, and Veterans have a better understanding of how to apply for and prevail on a GWI claim. This would also include describing the evidence needed, what to expect during a C&P exam, and what to look for in a VBA rating decision.

In 1992, Congress mandated public reporting on the costs of the Gulf War. GAO described how VA stopped creating and distributing the reports. I was the person, while working at VA, who created the reports in 2000. VA should resume the reports on a quarterly basis. Such reports are consistent with the "Veterans Health Care Act of 1992" in identifying Gulf War Veterans and reporting on various aspects of their VA healthcare and benefit activity (Public Law 102–585).

CONCLUSION

It is an uncomfortable truth, however, that the issue of GWI claims is here to stay for several more decades. As Gulf War Veterans age, we will file more claims, including GWI claims. This is because our conditions continue manifesting and worsening, thus revealing the true long-term cost of war and toxic exposures on our health.

In the alternative, without reform legislation, Congress should mandate that VA train C&P examiners and claims processors on the proper processing of GWI claims, reopen all denied GWI claims, and then complete adequate C&P exams and new rating decisions with retroactive dates going back to the original date of the Veteran's claim. Otherwise, the only remaining recourse may be litigation.

No Veteran should have to endure a lengthy, complex, and tortuous VA claims process. After working on this issue for 25 years, I am frequently confronted by countless Veterans who constantly share similar VA claim horror stories with me. Our goals as Gulf War Veterans remain the same today as they were in 1991, when we began falling ill due to toxic exposures while deployed to Southwest Asia or after returning home. Gulf War Veterans seek research to understand why we are ill, treatments to improve our health, benefits for those in need, training for those who assist us, and rigorous oversight and accountability of VA from our elected officials.

I am available if the Subcommittee Members or staff have questions. Thank you.

Kirt P. Love

Dear Subcommittee Members

My name is Kirt P. Love, and Im a disabled Gulf War Veteran, 19 year advocate, and former member of the Veteran Affairs Advisory Committee on Gulf War Veterans back in 2008.

The nature of this hearing is a important one in what it can do, provided its given the right content to move forward with. So I hope to elude to points that Ive also covered with the committee the last 3 years.

Much of the 1990's there were various committees that set in motion a flawed methodology that really never got corrected. From 1995 on even with the GAO's involvement - recommendations mostly fell flat on ways to steer VA. By 1998 the veteran community (and myself) rallied around PL 105–368 and PL 105–277 hoping to steer things in a more positive direction. The laws got passed into sudden over time and with much of the content lost to the omnibus bill edits.

VA promptly took advantage by dragging out implementation 2 years after it was signed. Only to take the clinical aspect and pervert it into the War Related Illness and Injury Study Center rather than the Gulf War Illness clinic we had set out for. Over the years it was made into a one time throw away visit you could not get a referral for. Once in, unless you knew what you wanted and demanded it - you got

very basic exams coupled with a psyche evaluation. No follow-up exam or long term programs.

Then VA taunted the very nature of the Research Advisory Committee and made it clear to them they could not operate on anything but research. So they were not vetted for healthcare or benefits. This later would become a ploy to eradicate vocal members and finally rig the committee for silent running in 2015.

As the years passed, nothing was done about healthcare or benefits. VA played down the Gulf War Registry, and the independent efforts of the GWVIS to keep any kind of records of any trends not research related. After the passing of Helen Malaskiewicz as the senior coordinator of the program, it fell into silence and disrepair. The Austin Automation center would no longer share any information with outside sources.

VA was so glib that it altered the GWVIS reports outright to play down the numbers, and my committee set up a task force to get answers. Yes, VA was white washing the numbers to under report them by 11% or more. VA's answer, get rid of the report. Then back the one time printing of the pre and port 911 reports that show nothing of value.

Years would pas with no annual public data tracking.

Other borderline programs fell into disarray. The Spouse and Children Registry of GW vets never got support, and it died quietly in 2003. Vaccine tracking, exotic diseases,

and such fell upon the Armed Force Institute of Pathology. The AFIP refused to catalog the samples in such a way researcher could request them at the time brain tumors surfaced in there vaults. It to took the thousands of Gulf War tissue samples it collected them and buried them at its new location once the staff was disbanded.

The National Academy of Science was tasked to provide reports sanctioned by VA. The very nature of that was perverted, and the committee never allowed anything but peer reviewed materials for review. What was peer reviewed at that time wasn't helpful to the vets, and volumes where left out on a technicality. By the time it came to the ALS in Gulf war vets, the very name of the report was changed to "ALS in the military" to diffuse the situation as Gulf War vets became part of the "Deployment Health" picture rather that helped make the number seem smaller.

So by 2007 I pushed to get a federal advisory committee through congress to address the items others could not. Even managed to get on the committee. What I didn't allow for was this wasn't congressional mandate, so VA put a very short tenure on the committee of 18 months and then set it with ringers that would not oppose VA openly. The chairman waited till enough time had passed, and then mocked many of my issues - mostly the issue of 3.317. The very term UDX / MCI which VA showed was easily dismissible due to its title. When I pushed, I was shut down for "telling VA how to suck eggs".

In 2008 the final report was not what I wanted, and it had taken a unpleasant turn groveling to the PDICI that Dr. Stephen Hunt headed up. The Post Deployment Initiative Care program was a scam, it was a psychiatric clinic looking for somatic issues which made me a instant critic. Enough so to I dissented on the committees final report, and make me a pariah in the VSO circles. Only to find out later the Gulf War Illness Task force had secret meetings at VA endorsing Dr. Hunt, and making none of this public for others to keep track of. The committee, and its report was all but hidden from the public. My letter of dissent never published by them on the page, and VA did its very best the last 9 years to pretend it never existed.

The end result to all this is at the anniversary of the Gulf War 25 years later, you cant even get a claim processed if you file under 3.317 and you certainly have no where to go that isn't disposable or secretive. The WRIISC serves no value, and is nothing like what it was intended yet its massive and secretly funded between its locations. The funding diverted to "Deployment Health" projects and a less than savory person who stays with that behind the scenes to keep it going for her DOD comrades. All the while supporting a program in Seattle Washington that the vets have grown to despise.

Everything about this is vile, to include the fact that 6 million records held by OSAGWI that should have been released last year are not going to made public any time soon. That 25 years after the war, NARA is going to keep these records beyond allotted storage time because of exclusion clauses towards "Weapons of Mass Destruction" and such. Of which 1.7 million are medically relevant to Gulf War veteran claims.

What we need is a revision of Gulf War Public Laws, and a consolidation of the intent without having to recreate all this from scratch. That we need a 20 year review of how and what failed, and what can be repurposed. We also need to change CFR 3.317 and get rid to the bottleneck terminology that keeps it a obstacle. Get

rid of terms like MCI and UDX that have no unique ICD 9, and link this to service, time, region just like VA spells out on its VA Gulf War web page.

PL 105–368 is now a very flawed law that VA abuses in many ways. Its given them funding, leverage, and the ability to wait vets out on time. Its in desperate need of revision to not only make it more current, but get rid of the bastardization such as the WRIISC that insult its very purpose. To scale back, bring it all under one roof, and make it veteran friendly, and always visible. Getting away from the white washing terms of "deployment health" and start addressing the specifics VA wants to ignore. Make this very specific and ongoing for GW vets that need specialized long term follow-up such as myself.

I apologize for the condensed format and seemingly vague points in this letter. What I really want to write is hundred of pages of extreme details since 1998 that would show a pattern. So if I dont keep this short, I loose the crowd to nap time. It is my wish that this be followed up, and that my committee also be reinstated in some other format with no termination date to deal with healthcare and benefits. Leave the defunct current RAC to not have to violate its charter. That 3.317 is a dysfunctional code starting with its very

terminology. That after 25 years we need to get this back on track to serve what little time I and my fellow vets have. As my own time is running out soon.

Thank you for your time and consideration. Have good day.

Sincerely

Kirt P. love
Director, DSBR
Former member VA ACGWV

Montra Denise Nichols, MAJ, RET, USAF, RN RET, BSN, MSN

National Vietnam and Gulf War Veterans Coalition

I am Montra Denise Nichols a Desert Storm Veteran and Gulf War Illnesses Advocate from 1992–2017 and giving testimony which gives the overview of the problem with gulf war illnesses claims. In order to cover this issue, one must understand it starts with when you walk in the door at VA seeking care and help. Our issue started with changes in our health and then progresses to benefits i.e. claims for compensation and answers and treatment which is now being found in research.

Since 1991 when we return from our service in Desert Storm, our group of veterans have been suffering without adequate health care and effective claims service. This has continue for going into our 26 year of returning home despite hearings, legislation, advisory committee on benefits, advisory committee on gulf war illness research, IOM contracted studies, GAO studies, countless committee hearings, countless meetings and task forces, and legislative actions leading to public laws but here we are still feeling as though nothing has changed! It appears DOD has not totally been forth coming to help and VA care and benefits has us feeling like third class citizens. Many have tried, many have given up, many have died in a younger age group than should have normally occurred to a group of service members that went into service fully healthy and accepted physically the only intervening factor was our service in a war theater during Desert Storm. Many years ago we had a law put in place to cover the undiagnosed illness, the chronic multi-symptom illnesses, chronic fatigue syndrome, fibromyalgia, Irritable bowel syndrome and numerous other health complaints as presumptive conditions. Still after all these years the VA Benefits, Compensation and Claims process is broken as each GAO study has documented. Others today in person and in written for the record testimony will discuss in detail with examples given from members of our community of veterans.

But in order to really understand the problem I believe you need an overview of the total problem that we Desert Storm Veterans have experienced because it all ties together one leads and impacts the other area of the VA. We in our overall community believe our government we swore to defend has not lived up to the due care and benefits earned by the giving of our services and our very lives. TOO MANY of our fellow veterans have died prematurely from Cancers especially brain cancers, heart disease i.e. Myocardial infarcts, pulmonary embolisms, and neurological conditions none of these have been added as presumptive conditions. They have been left without adequate care, no compensation for them or their surviving spouses, they have become homeless, families have broken over the health and financial distress, and some have given up leading to suicides. All of this has happened due to all portions of our government failing us the veterans of Desert Storm. This is totally UN-

ACCEPTABLE and must have immediate real action no more promises, no more words, no more denial, no more ineffective responses, and no more excuses.

Others today will testify in person and on submissions for the record on details of the claims for desert storm veterans situation I am here to provide a total overview of the problems that have occurred and the total interwoven situation from our service in theater to approaching the VA for care to seeking answers and effective, appropriate treatment, to getting research that should answer the physiological damage done and methods of real treatment, to how the total government system has failed, to how care and documentation from VA health has direct implications to our claims and benefits, and how legislative efforts have failed the Desert Storm Veterans. This has impacted 1/3 to ° of us Desert Storm Veterans. Many veterans took the systems missteps and gave up. Many were suffering quietly having been trained not to be gold brickers and not to complain. They struggle valiantly and heroically to go on and try to reach their own personal professional goals and to maintain themselves and their families. They gutted up ignore the symptoms and did not want to appear weak. Those that spoke up or continued pushing faced huge odds against them. Many were left in the dark totally and did not know to question and keep seeking care and help. Most of all they wanted to live their lives and not to be disabled and warrant a compensation. Many wanted to stay for a full 20 years or more in military service to their country and hid their concerns in order to struggle on and serve in the intervening years and deployments into war time environments adding more exposures to their weakened physiological bodies.

This whole situation starts with inadequate records, maintaining military active records from in theater, inadequate maintaining of logs from headquarters down to lowest level of units on location changes, vaccinations given, preventive medicines recorded in individual records, inadequate and erroneous measurement of exposures levels at multiple locations throughout the theater. Then inadequate documentation of medical concerns of the symptoms as they occurred both while on active duty status and upon leaving the service. The majority of troops were kept in the dark on information on exposures and what symptoms they needed to report i.e. any changes they had in pre-deployment, deployment, redeployment home, and later throughout post-deployment for 26 years.

There was no SOPs to medical personnel to truly take complete physical history details, documenting locations and specifics of duty positions that may be factors to consider, no physical assessments were done completely in evaluation of exposures documented or undocumented, medical personnel were not educated on exposures potential or what symptoms to assess and report in medical records, vaccine records went missing, medical items were not documented, the standards and regulations of maintaining all documents from every level of command were neglected.

Non-documented verbal directives seem quite realistically to have been given to turn a deaf and mute response to our concerns when we returned. Some doctors at the VA even said they could not help or their hands were tied. I know this lead to professional dissatisfaction to many of these health care providers. But MUM was the Standard operating procedure or else they were left totally uninformed due to the DOD actions. A few VA physicians and civilians researchers stood up for us since the beginning many were disciplined in many ways or found themselves out of jobs for speaking up.

If they weren't told, or given written information, or given documentation from the DOD that VA accepted, or educated -then that was just it. WE as veterans would end up and continue to surmise the why. Was it money, budget, cover, negligence, geopolitical, personal reputations of our leaders, politics, just ignorance, or blind obedience to orders not valuing the service members health and wellbeing, or even our commanders in the field and supervisory ranks also affected by the ill effects of exposures that their abilities and common sense were affected and degraded their leadership and responsibility to their troops.

Have no doubt they have suffered for 26 years now. They have been treated with no honor, no care, no celebration of their service. They have been treated as third class citizens not as valued service members and war time veterans. Their service is forgotten in every national veterans ceremony or memorial day ceremonies.

Another factor is inadequate education and knowledge to health care providers both military, VA, and civilians in regards to each exposure or multiple exposures with synergistic and overlaying physical damage. (whether documented and acknowledged by DOD or not!) None of the doctors and health care providers have ever had education in medical schools, internships, residencies, continuing medical education, or medical conferences, or in VA employment as mandatory training on our exposures or the greater area of military toxic materials and the effects thereof to physiological body systems. The majority of health care providers are whole fully uneducated on even our presumptive conditions of chronic fatigue syndrome,

fibromyalgia, Irritable bowel syndrome, or the mirage of our other health problems listed under ill defined chronic multi-symptom or un-diagnosable conditions. WE still get health care providers that get that look like a deer in the headlights, or how fast can They turf this to mental health and behavior medicine, or how can I avoid the veterans questions, or avoid real concerns, or avoid the good patient doctor communications, or how fast can I get them out the door. WE take in research articles and reports to help give them the info and tools but they are too busy and not required to receive and read and question. They do not even to seem to know what information is available if they pull up VA gulf war health, WRIISC, VA RAC GWIR, gulf war public health information on the computer sitting in front of them. They just follow the template as provided by VA on medical documentation for a health visit.

The battle on a term for diagnosis for us and definition has been talked about for 26 years! Name it gulf war Illnesses or military toxics conditions define it by symptoms and findings so far in research and give it a code and use the code! Quit running around in circles and in the process denying our physiologic changes and symptoms and denying claims for whatever purpose or reasons. You disrespect the veterans service totally and do not give the veterans any benefit of doubt that was caused by all the factors I am covering in this testimony. You Dishonor our service and sacrifices. You do not give due trust in the honesty of each veteran. A result of that loss of trust it leads to future generations of civilians questioning joining the military if their health and lives are not protected and given full priority attention and benefit of the doubt!

The first step was a Gulf War Registry that became a rushed questionnaire and very brief physical with very little physical assessment except yep breathing, pulse, Bp. No full physical, no complete detail history taking, no documentation of what the job was that the veteran did and what exposures needed to be documented i.e. fuels, tanks, flight duties, sanitation practice, noise levels exposed to, medicines, vaccines given in theater, where were they located from entrance to exit from theater, what unit and type of unit, what did they handle, did they handle dead bodies or injured EPWs or friendly casualties, or casualties showing symptoms, what symptoms no mater how slight occurred and when, what did they take note of in theater?, what did they observe as strange, what has changed head to toe.

No neurological exam, no follow on consults re sleep study, no referral to dermatology for skin samples are just a few examples. No history taking on changes noted in memory, multitasking, comprehension, executive management tasking, change of IQ, school or duty performance impacts. They did not document exposures to oil fires smoke and follow up with complete respiratory function test and challenge substance respiratory functions. No EEGs, EMG, no assessments by specialties like immunology, endocrinology, infectious diseases, otologist(hearing) testing, no visual acuity testing were some of the items neglected.

If you are going to do a registry then a full, complete, through history, complete physical, complete testing of blood hematological, immune factor, neurological transmitters testing, virus, infectious testing, viral testing, testing for endemic diseases, complete urine testing for Depleted uranium, metals and known toxins like a forensic toxicology screen must be done.

These tests are needed in relation to confirmed, suspected, or unknown toxins.

The registry records were never maintained from the start and data collection has been missing.

The early specialty centers set up for gulf war veterans by the VA, the early CCEEP by the military, and the follow on VA WRIISC were more complete in this aspect but the majority of veterans who had symptoms were not able to obtain these services. These services would have provided much more in depth evaluations and testing and medical reports to assist in the later application for claims and compensation from the start.

The health care within the VA for Gulf war illness and exposure assessment and medical reports is totally lacking on the physical symptoms and changes that occur after exposures to any military toxic exposures. The difficulty experienced in getting the diagnoses of Chronic Fatigue Syndrome, fibromyalgia, and irritable bowel syndrome that are so prevalent much less the other complaints and symptoms addressed in the regulations is another problem that has not been solved. Again the Doctors and health care professionals in the military, VA, and civilian health care areas do not receive education, continuing medical education, and training in military toxins. I wonder why when service members receive training in NBC why is the medical profession so lacking in knowledge? This is not covered in curriculums for medical schools, internships, or residencies.

The total emphasis on claims should be focused on Desert Storm Veterans and gulf war illnesses because we happened prior to 911, OIF, OEF, etc, or the world

trade center exposures. WE have waited too long! Where was the preparedness planning for medical professions? What if this happened within the continental US with massive civilians exposed? Would the medical professionals know what to do?

In the GAO reports they state 1.1 million claims and 40% with claims. How many of those are Desert Storm Veterans? Many Desert Storm veterans were also Vietnam Era and mistakenly listed under Agent Orange, yes we have documented cases of that too! And why does the GAO not include every VARO in their reviews why only a small number of VAROs are reviewed to get a really complete review? Why not pick out those with high rates of approvals and find out the best practices?

Without adequate Gulf War Registry Exams and with VA uneducated health care providers providing our health care then adequate medical records and medical progress notes and medical testing is interwown in the failure of successful claims adjudications ! The proof is in the medical records, progress notes, diagnoses lists, medications list, laboratory studies. Without proper mandatory training, education , CME and credentialing and Standard Procedures(SOP), standing orders it was destined to fail us the veterans in our claims process. The requirements of proof and documentation is the necessary steps for a successful claim. WE can not meet the requirements needed when we deal with VA Benefits/Claims.

Without the right credentialed specialists Drs it is next to impossible to get the presumptive conditions diagnosed. Then the VA thru the Choice or fee basis programs for Desert Storm Veterans to get to experts in the civilian medical profession does not work. When the Desert Storm Veterans do go on their own expense to civilian experts i.e. Rheumatology, Immunology, Dermatology, Neurologist, Endocrinology with definite expertise and credentialed by specialty boards then the C and P examiners and VA adjudicators ignore these experts diagnoses, history, medical testing, and DBQs. The doctors at the VA may diagnose but out right refuse to fill out DBQs for the veterans to help aid in the claims process.

The medical providers, C and P examiners, and VA adjudicators need mandatory and credential training to handle Desert Storm/Gulf War illness/ military toxins issues. We were told by VA headquarters personnel that all the adjudicators and examiners would receive mandatory training! They lied to several of us. The GAO study proves that fact!

The WRIISC staff at Palo Alto has done some clinician training both in person and by web training. How many no one seems to have a full data collection on that aspect. This has been a very small number I am sure. Again No mandatory education has been done! The scheduled session by phone and computer web is not known about at all by medical professionals at each VA hospital much less the clinics. The VA care providers have no knowledge on what WRIISC is, what they provide, how to make referrals, how to find all the basic educational materials and brochures, pamphlets, newsletters, magazines that the WRIISC have developed. These materials are seldom if ever seen in the VA Waiting Rooms or Doctors offices! The veterans get educated by other veterans of where to find these materials and they hand carry the info to their doctors. Then if they are lucky and do get referred the doctors at their home VA have problems with follow thru with the results and suggested plan of care. Again the documentation by WRIISC can help significantly in the success of claims being approved due to their documentation.

The VA RAC GWIRP since the turn over of committee members started under Secretary Shinseki, then McDonald has deteriorated that advisory group. The Presentations are not 100% applicable to what the mission of the RAC is. There are no short term and long term goals for each presentation made to the VA RAC GWIR. The RAC went to San Francisco a year ago but did not seek a presentation by Dr Golumb at UCSD and VA SD who is a prior committee member and gulf war illness funded researcher! When they went to Boston on their last meeting the funded DOD GWIRP Researchers at BU and Mass General were not invited to present past and current research findings on GWI.

Personally, I have communicated in writing and verbally at each meeting and to their staff coordinator the shortfalls of the RAC as the veterans see them. They do not provide full interactive video conferencing of their sessions. The example role model would be the HHS Civilian CFS/ME Research Advisory Committee which has excellent web based audio visual interactive meetings. They do not provide printed notebook materials for the attendees to reference even on a back table.

I have suggested and encourage the committee to consider and use VA facilities auditoriums like at Minneapolis VA where we have had MEG research studies done and hyper coagulation research and a treatment trial occurring! I suggested using Miami VA or the medical universities there to have DR Klimas and Roskamp Institute to review their funded gulf war illness research that is finished and ongoing. But no to that too. Then there is a Stanford University Researcher expert in civilian CFS/ME research and now funded at University of Alabama Birmingham for a gulf

war treatment trial research. Then there is Salt Lake City VA funded studies on treatment trials for IBS. Then there is the gulf war illnesses researcher at Georgetown Medical University here in DC another expert in civilian CFS/ME that I recruited who has had funded GWIR studies on MRI DT, Spinal Proteomics who has not been invited to present to VA RAC GWIR when in DC for their meeting.

Why are we not using VA hospital auditorium and the Medical Universities that are directly involved with VA hospitals as facilities for these RAC meetings. Certainly it would help cost wise much less drawn in more experts in the Medical Universities and their students! WE need the different locations throughout the country utilized so more veterans, Drs, researchers, and medical universities can be involved to further research and get answers and help to Desert Storm veterans. I would give the VA RAC GWIR at D in grade. All of us that fought for the introduction and passage of the law for the VA RAC GWIR and served as members of the committee or as attendees to the meetings have been distressed by its decline in productive goal and mission directed fulfillment. WE need a new RAC on a different set up model and covering military toxic exposures.

The VA is still looking at our gulf war illnesses as a psychological and Behavior Problem or Mental health problem. They are treating with anti-depression medications and psychological medications. Many of these have side effects impacting further our immune system of the body. They frequently are using multiple anti-depressant drugs at a time for a patient. And to use these drugs as pain control is not appropriate. Some of our Desert Storm veterans have been diagnosed with bipolar disease but never evaluated by MRI DT or MEG or other advanced neurological techniques. Is it possible that they have been misdiagnosed?

Genomics is what is needed NOW. That is the direction we are headed in many areas of medicine to include Gulf War illnesses. Dr Klimas, Golumb, DR Baranuck(Georgetown) and the researchers at Minneapolis are headed now in that direction! The VA MVP could recruit more Desert Storm Veterans rapidly and make that a priority now on GWI. Then we can rapidly move to individualized genomic treatment and in the process have more definitive evidence for the claims proof.

Serotonin and neurotransmitters have not been tested on Desert Storm veterans that would provide more definitive proof of physiological damage and symptoms of gulf war illnesses. Again this would provide more definitive proof for claims to be approved. Dr Terry at the VA has mention the neurotransmitters as being key to Gulf War illness but no testing or data is available because that has not been done.

Again, areas that could provide proof of exposures and physiological damage that could help with diagnose, proof for claims, and treatment avenues has not been meeting the urgent need. The other is that of biomarkers coming from the animal models and correlated with biomarkers from a small sample size of ill Desert Storm veterans that matched! Again proof from the desert storm veterans physical bodies that show exposures and proof that could be used individually in claims or by extending the benefit of the doubt rule. These developments in biomarkers and genomics can lead to true treatment of Desert Storm veterans.

There has been a lack of coalition forces' governments to interact in solving the medical problems and compensation issues. WE had UK veterans attend RAC meetings to take an active role by fellow Desert Storm veterans to set an example for the RAC but so far no action taken by the RAC to seek out known experts in coalition countries.

There needs to be an urgent priority by all entities in the US government from legislative branch, to health care VA and Civilians, to researchers, and to VA Adjudicates on the Gulf War illnesses. WE have not learned from the past of WWI, Atomic Veterans, Agent Orange Veterans, Gulf War Illnesses Veterans, the WTC contaminated responders, Camp Lejune Environmental exposures, Pesticide exposed agriculture workers, and other toxic environmentally contaminated military bases. There has been no Standardized Operating Procedures, standing medical orders, regulations, education, training, credentialing of all that were needed to be involved. Failures in the areas of documentation, tracking mechanisms, effective leadership and management at all levels that have direct impact on the effectiveness of claims adjudication and thus failure approval of claims at a higher percentage.

Who is hurt most? The Veterans! It has been evidence that 26 yrs of effort has failed not only in health care documentation but equally assuring the claims process is fair, rapid, and effective to serve tens of thousand, even hundred of thousands of Desert Storm Veterans.

WE need Toxic Exposure centers in each region of the country located close to VAROs. If doctors give a presumptive diagnosis there is no excuse for denial of the claim!

It seems to all of us Desert Storm veterans that it is the saying: Same ##### Different Day. What is need is SOPs, Leadership, Expertise, Outstanding Management,

Creative thinkers and researchers to truly be effective and solve the problems for Desert Storm Veterans with Gulf War Illnesses.

Enough delay has occurred!

WE hold all US Representatives, Senators, DOD officials, VA officials from every VA area, VA Headquarters, VA administrators, each VA hospital administrator, chief of medical staff, VARO director, and VA claims adjudicators, each committee or entity that has been involved as failing to provide for the health and well being in all ways to those Desert Storm Veteran dealing with Gulf War illnesses both with presumptive categories and yet to come the diagnosable illnesses/diseases that are leading to early age based diseases death rates.

I say again it is all interconnected and interwoven failures that have led to the extremely high denial of claims for Gulf War Illnesses and to correct this problem all areas have to be reviewed and revamped now. I hope my testimony offers you the overview of the interconnected failures. One of the reasons I pushed to cover the overview is because US Representatives and Senators change every election cycle and many elected after 1991 do not have the institutional knowledge of the problems and delays we have faced. New doctors and health professionals enter the profession, the military, and the VA constantly and are not aware. New VA claims adjudicators and new C and P examiners get hired without adequate or mandatory training.

WE need new legislation and laws now. No more delays fix this problem as the highest priority that it truly deserves.

Look at our past lessons in exposures in war and compare presumptives by war and exposure similarities and really look to the urgent need to add Brain Cancers, other cancers, myocardial infarctions, pulmonary emboli , hyper coagulation resulting connections, neurological diagnoses, immune-endocrine related diagnoses, Parkinsons Disease, early appearing Althemizers Disease,, and many other diagnosed conditions.

It is wrong to deny claims and leading to widows and widowers left high and dry after living thru their veterans deterioration and deaths. We veterans know each other and see those left with nothing due to serving this nation and having one of those life altering diagnosed illness in too early of an age group compared to like population of civilians at different age ranges. Maybe review the 911 workers at the World Trade center program and legislation as a model to follow.

Questions For The Record

HVAC to VA

1. An analysis of data in the GAO's report shows that the grant rates for undiagnosed illness (UDX) claims are lower than for chronic multi-symptom illness (CMI) in most regional offices.

a.Why is the grant rate for UDX claims below 10% at approximately half of the regional offices?

VA Response: When comparing approval rate data between regional offices (RO), which GAO used in their study, it is not feasible to draw conclusions on the reasons for approval rates or any variations between ROs. As mentioned in the testimony, VA has conducted special-focused reviews of completed claims in the last 2 years, and the reviews showed 94 percent and 89 percent accuracy rates. Further, the lower inventories of cases at certain offices also affect any comparative analyses conducted.

When discussing approval rates, it is important to note, as the GAO report revealed, that Gulf War Illness claims have about twice as many medical issues per claim as other disability claims. Further, this category of Veterans has six conditions on average for which service connection has been awarded, which is more than any other era of Veterans.

b.Does the grant rate at each regional office (RO) influence how work is assigned from the National Work Queue?

VA Response: The grant rate at each RO does not influence how work is assigned by the National Work Queue.

2. GAO's report showed that grant rates for Gulf War Illness (GWI) related medical issues varied across regional offices, from 0 to 64 percent for medical unexplained chronic multi-symptom illness (MUCMI) issues and

from 0 to 49 percent for UDX issues. Please explain the variation in grant rates among regional offices?

VA Response: Please see response to Question 1(a).

3. GAO's report noted that the grant rates of the oldest types of GWI related medical issues, UDX and MUCMI, have declined from 2010 to 2015. Similarly, the 2015 grant rate for UDX is approximately 10% according to GAO. Why are the grant rates for these types of GWI-related medical issues declining?

VA Response: Based on VA's analysis of data, to include fiscal year (FY) 2016 data (which was not included in GAO's analysis), there is not a trending decline in grant rates for UDX and/or MUCMI claims. In fact, as noted in our testimony, 4,594 out of 18,681 Veterans were awarded service connection for one or more UDX or MUCMI conditions in FY 2016. This equates to a 25 percent approval rate, which is an increase from the 22 percent approval rate in FY 2015. When analyzing only UDX claims, VA's approval rate in FY 2016 was 13 percent compared to 12 percent in FY 2015. For MUCMI's, the approval rate in FY 2016 was 31 percent versus 29 percent in FY 2015.

4. How much of the appeals backlog was the result of VA denials of GWI claims during the period reviewed by GAO, 2010–2015?

Fiscal Year	GWI Appeals Established
2010	162
2011	160
2012	151
2013	125
2014	205
2015	356

a. How many GWI-related medical issues are currently in the appeals process?

VA Response:
Number of GWI issues on pending GWI appeals (as of 7/31/2017):

Number of Appeals	GWI Issue Count
1,242	2,513

5. What is the grant rate of appeals filed by Gulf War veterans whose initial claim was denied?

VA Response:
Number of Grants (VBA and BVA), and Total Decisions (Grants, Denials, Appellant Satisfied with Decision, Remands, Withdrawn, Dismissed, Vacated)

Fiscal Year	Appeals Granted	Total Decisions	Grant Rate
2010	118	348	33.9%
2011	90	259	34.7%
2012	86	259	33.2%
2013	86	274	31.4%

Fiscal Year	Appeals Granted	Total Decisions	Grant Rate
2014	66	258	25.6%
2015	108	271	39.9%
2010–2015	554	1,669	33.2%

a. Does VBA track the number of appeals per veteran?

VA Response: Yes.
NODs Established (2010–2015):

Appeals per Appellant	Number of Appellants
1	1,131
2	14

Appeals Pending (7/31/2017):

Appeals per Appellant	Number of Appellants
1	1,196
2	20
3	2

6. Given VA's research into a potential connection between brain cancer and service in the Persian Gulf War, is VA considering adding brain cancer as a presumptive condition for Gulf War Veterans?

VA Response: Based on current science, VA has no immediate plans to pursue establishing presumptive service connection for brain cancer in Gulf War Veterans. VA will continue to review and evaluate any new science that might be sufficient to establish a presumption of service connection.

a. If yes, what is the timeline and cost estimate?

VA Response: N/A

7. Given the complexity of Gulf War Illness-related claims and that only 10% of medical examiners had completed voluntary, supplemental training, what efforts are underway to make this training for medical examiners mandatory?

VA Response: Currently, the Office of Disability and Medical Assessment (DMA) in conjunction with the Employee Education System (EES) has changed the status of the course to mandatory training for all Veterans Health Administration (VHA) clinicians who conduct compensation and pension (C&P) examinations.

a. Are there any current proposals to make training mandatory?

VA Response: All current VHA C&P examiners have been assigned a date of October 1, 2017, for mandatory completion of the training. The course is now a certification requirement for all new examiners before they can conduct C&P examinations. All VHA C&P examiners, regardless of what type of examinations they conduct, are now required to complete the "DMA Gulf War Exam" training.

b. Is training mandatory for contract providers?

VA Response: VHA does not currently have any contract staff performing C&P examinations. Historically, VHA contractors were excluded from conducting Gulf War examinations, thus the mandatory Gulf War training would not be applicable to them.

c. How does VA plan to enforce compliance with training requirements?

VA Response: VHA is monitoring and tracking the mandatory completion of the course through its C&P Certification Database; we are also working in concert with the Veterans Integrated Service Networks (VISN) and field facilities to ensure compliance with the established mandate to complete the training by October 1, 2017. EES is also providing assistance with compliance by requiring their Designated Learning Officers to assign this mandatory training to C&P providers in the field.

8. GAO noted that MUCMI issues are only identified as being related to GWI if VBA employees identify them within a Veteran's claims file. Is VBA concerned that employees may not always accurately identify UDX and MUCMI claims, and what is being done to limit the effect of human error?

VA Response: The Veterans Benefits Administration (VBA) has instructed field employees to carefully review claims and all other evidence of record to identify conditions for which service connection may be granted. This also includes reviewing the evidence of record to determine when and where a Veteran served, for example, because such service may warrant service connection on a presumptive basis. VA continues to improve its claims forms to solicit detailed information from the Veteran regarding his or her claim. In fact, VA is currently in the process of creating special environmental hazard form(s), which would allow employees to better identify claims related to Gulf War and/or other in-service hazards. VA Central Office will continue to provide information to the regional offices on various environmental hazards that may cause adverse health effects.

9. What accountability measures should VA implement to ensure that claims from Gulf War Veterans are timely and accurately processed?

VA Response: VA is committed to delivering benefits and services in a timely and accurate manner. This includes claims for disabilities received from Gulf War Veterans. The mandated training from and special reviews conducted by Central Office are examples of measures that will promote accuracy of processing and accountability in the field. VBA will continue these types of efforts, to include national and local quality reviews, which will ensure Gulf War Veterans receive a higher quality decision. In addition, VA Central Office will be mandating training for VHA examiners in response to the GAO recommendation. This measure will enhance the quality of examinations conducted for Gulf War Veterans.

Additionally, in May 2016, VBA implemented the National Work Queue (NWQ), which allows VBA to prioritize and distribute claim inventory according to RO capacity to address each Veteran or claimant's claim based on date of receipt. This new functionality improves processing times by allowing VBA to assign the next right case for action by matching claims to available capacity; reducing the overall amount of time claimants wait to receive a decision on their claims.

10. GAO reported that from 1994 to 2015, VA spent more than $160 million dollars on research related to GWI, with two offices focused on VA GWI research. Please explain the reason VA has not yet adopted a single case definition for Gulf War Illness.

VA Response: In 2014, after a year-long review, the Institute of Medicine (now National Academy of Medicine (NAM)) released a report on a case definition and Chronic Multi-symptom Illness, but could not decide on a single definition and recommended instead two research based definitions known as the Centers for Disease Control and the Kansas definitions. These definitions are difficult to use clinically or for benefits determinations. During that same year, a VA–Department of Defense (DoD) workgroup adopted a definition for their Clinical Practice Guidelines, but this definition was not research based or validated through research in clinical practice. Currently, VA is engaged in efforts to design a case definition that is explained below.

a. Who is responsible for prioritizing VA's research program?

VA Response: There are many entities that decide on research priorities.

VHA's Office of Research and Development (ORD) provides research funds to investigators at VA medical centers, and the priorities for Gulf War research projects in ORD are described in the Gulf War Research Strategic Plan (https://www.research.va.gov/pubs/docs/GWResearch-StrategicPlan.pdf). The strategic plan was developed by ORD with input from external advisory committees and internal experts. The highest priority is given to projects that deal with treatments and laboratory tests that could be used for diagnosing the condition. Each proposed research project is evaluated for scientific merit by a panel of subject matter experts (physicians and scientists) before a funding decision is made.

b. Explain if and when VA plans to create a consensus, evidence-based case definition for Gulf War Illness.

VA Response: VA, in collaboration with DoD experts, is currently engaged in a concerted effort to develop a plan for an evidence-based consensus definition that could be used in the clinical setting, but would be validated by research as well. The effort includes a thorough search of the literature and expert deliberations using various subject matter experts and VA and DoD collaborators, including the Congressionally Directed Medical Research Programs and the Naval Health Research Center. The workgroup is targeting this effort to be done by March 31, 2018.

11. Based on testimony received in connection to the hearing, how might VA's alleged lack of GWI-related research impact the current generation of Iraq and Afghanistan Veterans?

VA Response: VA continues to perform and to fund GWI related research. This research will provide benefit to Veterans of more recent conflicts. As an example, VA is funding a special volume on Gulf War and Health by NAM to review possible intergenerational effects of various toxic exposures. Although the contract specifies this is targeting the first Gulf War, VA has encouraged the Committee to think broadly so that the findings might translate to the newer conflicts as well. Also, VA has the three War Related Illness and Injury Study Center sites (WRIISC–DC, CA, NJ) that fall under the Post Deployment Health Service. These specialty sites are doing research on health effects that translate across conflicts. Post Deployment Health Services currently has five Gulf War related research studies in progress.

12. VA's testimony stated that VBA works with VHA and the DOD in joint work groups that address occupational and environmental hazards related to military service.

a. When did these work groups begin?

VA Response: The joint DoD/VA Deployment Health Work Group (DHWG) met for the first time in January 2003. DHWG reports directly to the joint DoD/VA Health Executive Council.

b. How often do they meet?

VA Response: The Work Group meets monthly and is made up of representatives from VBA/VHA/DOD Defense Health Headquarters and the Uniformed Services.

c. What are some of the goals for these work groups?

VA Response: DoD/VA DHWG was established to ensure coordination and collaboration to maintain, protect, and preserve the health of Armed Forces personnel. In order to improve force health protection efforts, DHWG focuses on the health of active-duty members, Veterans, and their families during and after combat operations and other deployments. Initially, the primary focus was on Service members returning from Operations Iraqi Freedom and Enduring Freedom. In addition, DHWG coordinates initiatives related to Veterans of all eras, going back to the 1940s. DoD and VA share information and resources in the areas of deployment health surveillance, assessment, follow-up medical care, health risk communication, and research.

d. How do these groups and VA in general, track and record environmental exposure for the current generation of service members?

VA Response: A millennium cohort study began in 2001 and will continue until 2022. Launched in the summer of 2001, the Millennium Cohort Study began enrolling a representative sample of US military personnel, both active duty and Reserve/Guard members, who agreed to participate in follow-up well past their time in service, for up to 21 years. All participants provide important information on exposures and health through and beyond their time in service. Information is maintained confidentially and securely. The Millennium Cohort Study was designed to conclude in 2022.

13. How many registries does VA maintain related to deployment and environmental exposure?

VA Response: VA has six Congressionally-mandated registries.

a. How are these records being used to improve the diagnosis and treatment of deployment related conditions?

VA Response: VA and collaborators have built cohorts for research using these registries. However, a more important aspect of these registries is that they enable VA to provide clinical care, education as to issues that may arise, and assessments to Veterans. Examples are the Toxic Embedded Fragment Surveillance Center Program that does thorough workups on affected Veterans, and the Gulf War and Agent Orange Registries. Veterans benefit from a discussion of the results of their exams, specialty clinical consultations, and examinations when necessary. VA has a current multi-year, multimillion dollar effort to improve the utility of the reg-

istries and improve the data utility. Finally, VA has a concerted effort underway to train providers and environmental health coordinators on various aspects of environmental exposures and conducted several trainings and outreach. The newest registry, the Airborne Hazards and Open Burn Pit Registry is providing a service to both Veterans of the first Gulf War and also Veterans of the more recent conflicts in that area.

Registries are self-reported "opt-in" lists, and these attributes have significant limitations for research. The Individual Longitudinal Exposure Record (ILER) may correct that concern. ILER is a VA/DoD effort funded with Joint Incentive Funding to develop an automatic recording of exposures from the time a person enters military service until discharge or retirement. This would allow VA to place a person at a specific place and time and know what exposures and at what levels the Servicemember was exposed, rather than relying on best recollection. VA has recognized the need and a pilot will be delivered in summer 2018.

b. Please provide a list of registries

VA Response:

- Agent Orange Registry
- Airborne Hazards and Open Burn Pit Registry
- Gulf War Registry
- Ionizing Radiation Registry
- Depleted Uranium Follow-Up Program
- Toxic Embedded Fragment Surveillance Center

14. Much of the data that GAO used to conduct the review is easily available within VA's Performance Analysis and Integrity unit, but it is not reported publicly and reportedly not provided to Veterans' Service Organizations (VSOs).

a. Will VA publicly report this data on a quarterly basis?

VA Response: VBA is not routinely reporting specific trend data about GWI claims as there have been no significant changes in recent years.

b. Is VA routinely tracking and publishing trend data about the characteristics of GWI claims. If not, please explain why not.

VA Response: VBA is not routinely reporting specific trend data about GWI claims as there have been no significant changes in recent years. Two studies into the rating characteristics of GWI claims have been conducted in the past few years. Copies are attached along with a spreadsheet that correlates to the December 2015 report. In addition, we have included a spreadsheet that shows the trends through July 2017 for UDX and CMI decisions.

15. The GAO report states: "VBA Officials noted that it may be more useful to compare Gulf War Illness rates to those of presumptive disability claims, such as those for presumptive illnesses VA associates with exposure to Agent Orange during the Vietnam War. However, the data provided to us by VBA did not allow us to conduct this analysis."

Does this analysis exist in any VA internal or independent reports or reviews? If so, please provide a copy of all such reports and reviews. If not, please explain why not.

VA Response: VA is not aware of this analysis existing in any internal or independent reports or reviews. VBA believes there may be something to be gleaned from a comparison of grant rates for presumptive diseases across different eras and such a study is planned when competing requests of higher priority have been satisfied.

16. Please provide detailed information regarding the consistency study completed in April on referrals for medical examinations. Such information should include the following:

a. How the study was conducted.

b. The results of the study.

c. The results of the study specific to Gulf War Illness claims.

d. The steps VA has taken to correct any issues with referrals revealed in the study.

VA Response: In April 2017, Compensation Service conducted two computer-based consistency studies on the Southwest Asia exam requirements. The Veterans Service Representative (VSR) pre-test was comprised of three scenario-based questions assessing the following objectives: determining when it is appropriate to request exams in claims based on Southwest Asia service; determining the language requirements for exam requests based on Southwest Asia service; and recognizing

which exam Disability Benefits Questionnaire (DBQ) is required for Southwest Asia service conditions. The Rating VSR (RVSR) pre-test was comprised of eight scenario-based questions assessing the following objectives: determining when it is appropriate to request exams in claims based on Southwest Asia service; recognizing which exam DBQ is required for Southwest Asia service conditions; and determining whether the exam is sufficient for rating purposes in cases based on Southwest Asia service.

Compensation Service requires that any consistency study participant who incorrectly answered one or more questions in the pre-test take the computer based training along with the post-test associated with the subject of the study. Participants must correctly answer all questions on the post-test to complete the study and receive credit.

All questions on both the April 2017 VSR and RVSR Consistency Studies assessed the participants' competency with the Southwest Asia Exam requirements. There were a total of 3,151 participants that completed the VSR pre-test with an average score of 43.2 percent. Of these participants, 10.2 percent of the participants answered all three pre-test questions correctly and received credit without needing to take the Southwest Asia Exam requirements computer based training or post-test. Those participants who incorrectly answered one or more questions on the pre-test were required to immediately take the computer based training on the Southwest Asia Exam Requirements and the post-test. Of the VSR study participants required to take the computer based training and the post-test, 35 percent answered all the post-test questions correctly on the first attempt.

There were a total of 3,484 participants that completed the RVSR pre-test with an average score of 56.4 percent. Less than one percent of the participants answered all eight pre-test questions correctly. Those participants who incorrectly answered one or more questions on the pre-test were required to immediately take the computer based training on the Southwest Asia exam requirements and the post-test. Of the RVSR study participants required to take the computer based training and the post-test, 14 percent answered all the post-test questions correctly on the first attempt.

Both studies had a training portion based on the questions from the tests.

17. Please provide the number of appeals that were completed from fiscal years 2010 to 2015, disaggregated by FY, that were related to UDX or MUCMI claims.

VA Response:

Fiscal Year	Total Decisions
2010	348
2011	259
2012	259
2013	274
2014	258
2015	271

18. For such appeals from fiscal years 2010 to 2015, please provide the following information, disaggregated by each FY:

a. How many appeals were completed during that time period?

b. How many appeals were approved?

c. How many appeals were denied?

d. How many appeals were remanded?

VA Response:

Fiscal Year	Total Decisions	Appeals Granted	Appeals Denied	Appeals Remanded	Veteran Satisfied with Decision*	Other Decisions**
2010	348	118	30	117	59	24
2011	259	90	21	91	35	22
2012	259	86	22	84	42	25
2013	274	86	24	86	50	28
2014	258	66	24	74	66	28
2015	271	108	15	63	68	17

* Appellant Satisfied with the decision on the Statement of the Case
** Includes appeals Withdrawn, Dismissed, or Vacated

○