

**TWENTY-FIVE YEARS AFTER THE PERSIAN GULF
WAR: AN ASSESSMENT OF VETERANS AFFAIRS'
DISABILITY CLAIM PROCESS WITH RESPECT TO
GULF WAR ILLNESS**

JOINT HEARING

BEFORE THE

SUBCOMMITTEE ON OVERSIGHT AND
INVESTIGATIONS

JOINT WITH

SUBCOMMITTEE ON DISABILITY ASSISTANCE AND
MEMORIAL AFFAIRS

OF THE

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CONTENTS

Tuesday, March 15, 2016

	Page
Twenty-Five Years After The Persian Gulf War: An Assessment of Veterans Affairs' Disability Claim Process with Respect to Gulf War Illness	1
OPENING STATEMENTS	
Honorable Mike Coffman, Chairman	1
Prepared Statement	32
Honorable Ann Kuster, Ranking Member	2
WITNESSES	
Mr. David R. McLenachen, Deputy Under Secretary for Disability Assistance .	4
Prepared Statement	32
Accompanied by:	
Mr. Bradley Flohr, Senior Advisor, Compensation Service, Veterans Benefits Administration, U.S. Department of Veterans Affairs	
Mr. Zachary Hearn, Deputy Director for Claims, Veterans Affairs and Rehabilitation Division, The American Legion	5
Prepared Statement	35
Mr. Aleksandr Morosky, Deputy Director, National Legislative Service, Veterans of Foreign Wars	7
Prepared Statement	38
Mr. Rick Weidman, Executive Director for Policy and Government Affairs, Vietnam Veterans of America	9
Prepared Statement	40
Mr. Richard V. Spataro, Director of Training and Publications, National Veterans Legal Services Program	10
Prepared Statement	43
FOR THE RECORD	
Anthony Hardie, Gulf War Veteran and Director, Veterans For Common Sense	47
Ronald E. Brown, Gulf War Veteran and President, National Gulf War Resource Center	53

**TWENTY-FIVE YEARS AFTER THE PERSIAN
GULF WAR: AN ASSESSMENT OF VETERANS
AFFAIRS' DISABILITY CLAIM PROCESS WITH
RESPECT TO GULF WAR ILLNESS**

Tuesday, March 15, 2016

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

The Committee and Subcommittees met, pursuant to notice, at 10:30 a.m., in Room 334, Cannon House Office Building, Hon. Mike Coffman [Chairman of the Committee] presiding.

Present: Representatives Coffman, Lamborn, Roe, Benishek, Huelskamp, Walorski, Kuster, O'Rourke, Walz, Abraham, Zeldin, Costello, Bost, and Ruiz.

OPENING STATEMENT OF CHAIRMAN COFFMAN

The CHAIRMAN. Good afternoon. This hearing will come to order. I want to welcome everyone, especially our good friends from the Subcommittee on Disability and Memorial Affairs, to today's hearing regarding VA's handling of disability claims for Persian Gulf War veterans.

As a preliminary matter, I would like to ask unanimous consent that statements from three Gulf War veterans, and advocates for the issues we will discuss today, be entered into the record. The statements are found in each Members' packet. Hearing no objection, so ordered.

This hearing is the second part of the Committee's two-part series on the 25th Anniversary of the Persian Gulf War, a war in which I served. Today, we will examine VA's own data that reveals a 16 percent approval rate and an 84 percent denial rate for claims of Gulf War veterans for undiagnosed illnesses and chronic multi-symptom illnesses, both presumptive conditions under current law.

VA often seems to deny these claims because it demands to know the specific cause for the 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 critical point to understand is that veterans cannot receive VA care for symptoms of Gulf War illness when a majority of those claims are denied by VA.

We will also discuss former Under Secretary Allison Hickey's email citing her, "concern that changing the name from chronic

multi-symptom illness to Gulf War illness might simply imply a causal link for veterans who served in the Gulf.”

Ms. Hickey’s official email exposed VA’s efforts to block not only the use of the term recommended by the Institute of Medicine for Gulf War illness, but also VA’s practice of requiring causality for GWI claims, even though, again, presumptive conditions do not require causality. We also know—we also want to know more about an internal VA email, which has been provided to today’s panel, that reveals claims evidence that has been lost, even though VA’s system told veterans that such evidence was received. This is not particular to Gulf War veterans, but important regarding claims processing in general.

I want to also mention that last Friday, March 11th, VA held a community of practice call to discuss issues related to our Subcommittee’s hearing held on February 23rd. The call included more than 50 participants, and it discussed how to improve care for veterans suffering from Gulf War illness. Unfortunately, the majority of the attention was given to a presentation by Dr. David Kearney regarding chronic pain with what seemed to be an emphasis on PTSD, and the use of mindfulness as a method of treatment for Gulf War illness.

The call, coordinated by Dr. Stephen Hunt, shows that VA still clings to its often criticized efforts, and it contradicts his testimony from February 23rd, leading me to believe veterans suffering from Gulf War illness will never receive appropriate care while Dr. Hunt is at all connected to the issue.

While the conversation during Dr. Hunt’s call warrants additional comments, I will save that for a later time. Before I turn my—to my friend Ranking Member Kuster, I want to highlight that the invitation for this hearing specifically cited our interest in discussing, “veterans who served in the Persian Gulf War,” and yet VA’s testimony has lumped information from 1990 with the current OIF, OEF veterans in an apparent effort to reflect better statistics than those specific to our issue today.

With that, I now yield to Ranking Member Kuster for any opening remarks she may have.

[THE PREPARED STATEMENT OF CHAIRMAN COFFMAN APPEARS IN THE APPENDIX]

OPENING STATEMENT OF ANN KUSTER, RANKING MEMBER

Ms. KUSTER. Thank you very much, Chairman Coffman, and Chairman Abraham, and Ranking Member Titus, who will be with us shortly, for holding this hearing on Gulf War veterans.

As I have said during our hearing on Gulf War illness last month, in the 25 years since the end of the Gulf War, many veterans have suffered from symptoms that are not readily identifiable or well understood, and still struggle to receive compensation for their illness.

During our hearing—the previous hearing, we heard from medical experts, researchers, and Under Secretary Clancy, and they all agreed that the symptoms of Gulf War illness vary and that research must continue so that we can better understand and treat

our veterans suffering from unexplained medical conditions associated with their Gulf War deployment.

In 1998, Congress passed the Persian Gulf War Veterans Act, which granted veterans who served in the Persian Gulf during the first Gulf War a presumption of service-connection for their illnesses associated with their service. This gave our Gulf War veterans compensation for their illness and access to VA medical care to treat their symptoms.

This change reflects our belief that veterans should not be denied disability compensation or access to VA health care because their symptoms may vary, or because it is not fully understood what caused Gulf War illness, or other unexplained symptoms. But 18 years later, we continue to receive reports that veterans suffering from Gulf War illness and other unexplained medical conditions are improperly denied VA compensation for not being able to establish a service-connection when they were deployed to the Persian Gulf. Each time this happens, another veteran is being denied the compensation and health care that this Nation owes to them. And this is simply unacceptable.

We have also received reports that as a cohort, Gulf War veterans have a higher disability claim denial rate, higher than her OEF and OIF veterans. This is why I am concerned about the end of the Gulf War presumption of services connection this year. I am concerned that veterans who may have been improperly denied compensation and health care by the VA will not have a chance to submit a claim after this point. I am also concerned that veterans who became sick later in life due to their deployment will be unable to receive compensation or VA health care.

The VA has extended this presumption period once, but now it is up to Congress to decide if another extension is necessary. I look forward to hearing from our witnesses today about whether another extension is warranted and necessary. And I also want to know what needs to be done to improve the disability claims process for Gulf War veterans.

I want to know if Veterans Benefits Administration employees are properly trained to rate Gulf War veterans claims, and how can we improve the quality of the claims rated so that veterans are not forced to appeal their claim every time. And with that, Chairman Coffman, I yield back.

Mr. CHAIRMAN. Thank you, Ranking Member Kuster. I ask that all Members waive their opening remarks as per this Committee's custom. Additionally, Chairman Abraham and Ranking Member Titus will provide their statements at the conclusion of the hearing.

With that, I invite the first and only panel to the witness table. Thank you. On the panel, for the Department of Veterans Affairs we have Mr. David McLenachen, Deputy Under Secretary for Disability Assistance. He's accompanied by Mr. Bradley Flohr, Senior Advisor for the Compensation Service of the Veterans Benefits Administration.

Also on the panel we have Dr. Zachary Hearn, Deputy Director for Claims of the Veterans Affairs and Rehabilitation Division of the American Legion. Mr. Alexandra Morosky, Deputy Director for the National Legislative Service of the Veterans of Foreign Wars. Did I pronounce that right?

Mr. MOROSKY. It's Aleksandr, sir.

Mr. CHAIRMAN [continued]. Aleksandr. Okay, I'm sorry. Mr. Rick Weidman, Executive Director for Policy and Government Affairs for the Vietnam Veterans of America, and Mr. Richard V. Spataro, Director of Training and Publications for the National Veterans Legal Services Program.

I ask for witnesses to please stand and raise your right hand.

[Witnesses sworn.]

Mr. CHAIRMAN. Please be seated. And let the record reflect that all witnesses have answered in the affirmative.

Mr. McLenachen, you are now recognized for five minutes.

STATEMENT OF DAVID MCLENACHEN

Mr. MCLENACHEN. Chairman Coffman, Chairman Abraham, Ranking Member Kuster, and Members of the Subcommittees, thank you for the opportunity to discuss VA's processing of claims for disability benefits from veterans who served and, in some cases, continue to serve in the Persian Gulf war.

I am accompanied today by Mr. Bradley Flohr, Senior Advisor in our Compensation Service. We will discuss our efforts to ensure that Gulf War veterans receive the benefits they have earned, VA—VA's processing of these claims, its training and quality assurance efforts, presumptive service-connection, the statutory authority for establishing presumptions, and the science and rationale behind such presumptions.

This year marks the 25th anniversary of the start of the Gulf War. The initial conflict lasted from August 1990 until February 1991. However, neither the President nor the Congress has declared an end to the Gulf War. So men and women who serve in the Southwest Asia theater of operations to this day remain entitled to presumptions of service-connection based upon their service.

As of the end of fiscal year 2015, almost 7.2 million veterans served during the Gulf War era and over 1.8 million of these veterans were in receipt of disability compensation, which is the highest percentage of veterans in receipt of compensation from any era, war time or peacetime. Gulf War veterans who have received VA compensation average greater than six service-connected disabilities. Again, more than any other era. And Gulf War veterans now make up the majority of claims that VA receives.

VA continues to improve the efficient, timely, and accurate processing of Gulf War veterans' claims. It has reduced its overall backlog of pending claims by approximately 86 percent from its peak in March 2013 to the end of February 2016. VA has also reduced the average days for waiting for a decision to 93 days, which is a 189-day reduction from its peak in March 2013.

The Veterans Benefits Administration is constantly looking for ways to improve the service it provides to this cohort of veterans. We closely review Gulf War issues with the Veterans Health Administration, the Department of Defense, the Institute of Medicine, and the National Gulf War Resource Center.

VBA has a national quality review staff as well as quality reviewers in its local regional offices to ensure that employees correctly process and decide claims for Gulf War illness. Last year, VA

conducted a special focused review of decisions on claims for Gulf War-related illness which showed a 94 percent accuracy rate.

Although the science and medical aspects of undiagnosed illnesses and multi-symptom illnesses are not yet fully understood, VA continues to review scientific and medical literature to gain a better understanding of the impact of these illnesses on Gulf War veterans.

Presumptive service-connection fills a critical gap when exposure to toxic substances or certain disabilities resulting therefrom are not specifically documented in a Gulf War veteran's service records. Service-connection for an undiagnosed illness or multi-symptom illness 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, 2016.

Service-connection is also warranted for veterans who contract certain infectious diseases such as malaria, Q fever, and West Nile virus after Gulf War service, and that includes Afghanistan. The Secretary of Veterans Affairs has broad authority under Section 501 of Title 38, United States Code to establish presumptions.

To determine which diseases are associated with such service, the Secretary takes into account reports from the National Academy of Sciences, and all other sound medical and scientific information that's available. Public Law 105-368 charges VA with the responsibility for notifying Congress of NAS findings that might impact presumptions of service-connection for diseases associated with service in the Southwest Asia theater of operations during the Gulf War due to exposure to biological, chemical, or other toxic agents, environmental or wartime hazards, or preventive medicine, or vaccines.

That concludes my opening statement, we are happy to answer any questions that you might have. Thank you.

[THE PREPARED STATEMENT OF DAVID R, MCLENACHEN APPEARS IN THE APPENDIX]

Mr. CHAIRMAN. Mr. Hearn, you are now recognized for five minutes.

STATEMENT OF ZACHARY HEARN

Mr. HEARN. Thank you. 9,358 days. 9,358 days have lapsed since our Nation deployed nearly 700,000 brave men and women of an all volunteer military to soundly defeat an aggressor and secure the peace. Today, many of these veterans need our help, and sadly, they have not been able to receive the benefits associated with their service in Southwest Asia.

Chairman Coffman, Abraham, Ranking Members Kuster, Titus, and distinguished Members of the Subcommittees on Oversight and Investigation and Disability Assistance and Memorial Affairs, on behalf of National Commander Dale Barnett, and the over 2 million members of the American Legion, we welcome the opportunity to discuss the struggles that veterans with service in Southwest Asia have faced in receiving disability benefits associated with their Persian Gulf service.

According to VA's March 2014 update for Gulf War veterans, 37 percent of veterans that served during Operation Desert Storm suf-

fer from symptoms associated with Gulf War service. Yet, in over 9,100 days since the final shots of Operation Desert Storm were fired, approximately 80 percent of all claims associated with Persian Gulf service were denied according to a separate VA report.

The concept of the Department of Veterans Affairs presumptively service-connecting conditions associated with environmental exposures is not new to this generation of veterans. Veterans that participated in nuclear testing have conditions presumptively related to radiation exposure, and veterans with exposure to herbicides such as Agent Orange have a host of conditions that are presumptively related to their military service.

So what separates the Gulf War generation from previous generations of veterans? For veterans with service in Vietnam, if they were diagnosed with conditions such as diabetes, ischemic heart disease, or a variety of cancers, outside of rare circumstances, they are presumptively service-connected for these conditions. It is simply a process of receiving a diagnosis and then determining the severity of the condition affecting the veteran.

For veterans with service in Southwest Asia from August 2nd, 1990, to the present, gaining service-connection for presumptive conditions is not as easily accomplished. Many of these—many of these conditions or symptoms associated with what VA has labeled as undiagnosed illness. The term is inherently gray and confusing. Veterans must endure years of medical testing and may even have multiple diagnoses associated with their symptoms.

But here's the catch. The moment that the veteran is diagnosed, it is virtually impossible to receive service-connection on a presumptive basis because the condition is no longer undiagnosed.

The American Legion has over 3,000 accredited representatives located throughout the Nation. To ensure we provide effective advocacy for veterans, we bi-annually hold department service officer's school. During last month's training, we specifically discussed concerns surrounding Gulf War veterans and presumptive service-connection. Often, these representatives state that via medical professionals will assign symptoms to aging or, sadly, even malingering.

For those that ultimately gain service-connection, it only comes after years of testing to exhaust the possibilities of other diagnoses. This process often causes significant stress for veterans and their families.

Beyond concerns surrounding VA, many veterans of our National Guard and reserve components have an uphill fight regarding their medical records. While Operation Desert Storm serves as a first major conflict in the American Century with an all volunteer military, it also served as the impetus for frequent use of our guard and reserve forces.

Unfortunately for guard and reserve veterans, treatment records become scattered between their duty station, mobility center, and foreign hospitals. As a result, these veterans have conditions that could be attributed to their military service, but due to unavailable records, are never able to receive the required positive nexus statement.

To help correct problems facing Gulf War veterans, the American Legion believes that all of VA's disability benefits questionnaire should include asking if, a) the veteran served in Southwest Asia;

and b) has the medical professional considered the relationship between the sought symptoms and conditions in Gulf War service.

Additionally, we continue to call for a full implementation of the Virtual Lifetime Electronic Record. While VA has shown progress, concerns surrounding obtaining records from the Department of Defense continue to linger. Finally, there needs to be an increase in education for medical professionals regarding Gulf War veterans to decrease the delay in benefits and an increase in outreach to veterans to improve their knowledge regarding presumptive conditions associated with Gulf War service.

Again, on behalf of National Commander Dale Barnett and the millions of dedicated veterans that comprise the Nation's largest veterans service organization, we thank you for having the opportunity to speak today. I'll be happy to answer any question—any of the Committee's questions. Thank you.

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

Mr. CHAIRMAN. Thank you, Mr. Hearn. Mr. Morosky, you are now recognized for five minutes.

STATEMENT OF ALEKSANDR MOROSKY

Mr. MOROSKY. Chairman Coffman and Abraham, Ranking Members Kuster and Titus, and Members of the Subcommittee, on behalf of the men and women of the Veterans of Foreign Wars of the United States, I'd like to thank you for the opportunity to testify on VA's disability claims process with respect to Gulf War Illness.

Today's hearing is extraordinarily timely, as this year our Nation recognizes the 25th anniversary of the Persian Gulf war. While symbolic recognition is important, the VFW strongly believes that the most meaningful way to honor the service of Persian Gulf veterans is to ensure they have access to the benefits they need and deserve.

All too often we find that this does not happen. This is largely due to the fact that the signature condition associated with the Persian Gulf war, commonly known as Gulf War Illness, presents itself in a way that's not conducive to the traditional VA disability claims process. Consequently, our VFW service officers and appeal staff report that VA denies Gulf War Illness claims at a consistently higher rate than other types of claims.

Part of the challenge is that Gulf War Illness is an inherently difficult condition to diagnose and treat. This is because it presents itself as a host of possible symptoms rather than a single condition that is clearly identifiable and unmistakable.

What is certain is that more than 200,000 Persian Gulf war veterans suffer from symptoms that cannot be explained such as chronic widespread pain, cognitive difficulties, unexplained fatigue, and gastrointestinal problems, just to name a few. Instead of Gulf War Illness, VA uses the term medically unexplained chronic multi-symptom illness, or simply undiagnosed illness, to describe those symptoms. Although undiagnosed illness is considered a presumptive condition for Persian Gulf veterans, there are certain factors that prevent them from receiving favorable decisions when claiming that condition.

When claiming undiagnosed illness, the veteran lists the symptoms he or she is experiencing. These symptoms are often seemingly unrelated to one another, affecting multiple body symptoms. As a result, VA assigns separate disability benefit questionnaires, or DBQ's, for each symptom and separate exams are scheduled.

The current Gulf War DBQ asks the physician whether there's a condition of each body system present, and then asks them to complete the relevant DBQs. Only after that are questions about undiagnosed illnesses asked. We find that this practice of assigning separate DBQs for each symptom being claimed in connection with undiagnosed illness has the effect of promoting diagnoses even when those diagnoses are minimally supported.

Once a symptom receives a diagnosis, it's no longer considered connected with undiagnosed illness, which, as its name implies, requires that the illness be unexplained. Since undiagnosed illness is ruled out for that condition, the veteran no longer has the opportunity to be granted on a presumptive basis. Often lacking any evidence of the condition in the service treatment record, a nexus cannot be established, and the claim is denied.

VFW staff at the Board of Veterans Appeals notes that remands become numerous in these cases, and veterans often receive several different diagnoses for the same symptom from different doctors as a result. They believe that this is due to minimal support for those diagnoses in the first place. It is apparent to them that VA seems to go to great lengths to find diagnoses for each symptom simply so that undiagnosed illness can be ruled out.

The practice of parsing out symptoms has the additional effect of preventing a holistic evaluation for undiagnosed illness. When the claim is for an undiagnosed illness, the VFW believes the physician should be asked more questions about the cluster of symptoms, which could be one illness leading to symptoms in multiple body symptoms rather than separate conditions related to each symptom. Only if they're confirmed diagnoses should separate DBQs be completed.

To improve the current system, the Gulf War DBQ should be analyzed by a team of physicians, including those from a war-related illness and injury study center. Additionally, VA should grant veterans reasonable doubt when deciding whether or not a veteran's symptoms should be considered undiagnosed illness.

Mr. Chairman, we see this as the most significant barrier for veterans seeking service-connection for Gulf War Illness. As noted in my written statement, the VFW has several other recommendations, including analyzing whether it would be better to process Gulf War illness claims at a centralized location; better tracking for Gulf War related BDD claims; enabling contract physicians to conduct Gulf War Illness exams; and training for claims adjudicators.

Mr. Chairman, this concludes my testimony. I'm happy to answer any questions you may have. Thank you.

[THE PREPARED STATEMENT OF ALEKSANDR MOROSKY APPEARS IN THE APPENDIX]

Mr. CHAIRMAN. Thank you, Mr. Morosky. Mr. Weidman, you are now recognized for five minutes.

STATEMENT OF RICK WEIDMAN

Mr. WEIDMAN. Thank you, Mr. Chairman. No doubt each of you are asking yourselves the obvious question is, given that we're a single generation organization, why are we here today? And the answer is, we are committed. Our founding principle is, never again shall one generation of American veterans abandon another, number one. But secondly, what is happening to the Gulf War veterans is all too reminiscent of the way in which we were bounced around on Agent Orange where they denied, denied, and most Vietnam veterans who've been through this, it's almost a truism that delay, deny until they die. And they're doing the same thing to those who fought in the Persian Gulf War.

It is the sophistry involved in trying to break out the symptoms in multi-symptom Gulf War illness, is—and then forcing you to prove that what that is connected to is—the reason why I say it's sophistry, is VA well knows that you cannot pin down exact cause when you have a multi-toxin environment, which is exactly what you had during the Gulf War.

And given that together, it is—it is something that what we should be doing is doing epidemiological studies intensively of this population compared with their peers in the military and the same MOS who did not deploy to the Gulf, and their civilian peers because it may be something about military life in general.

So it is—having—having attended the IOM meeting recently, I, for the first time really, understand the emotional impact that they keep saying that there's nothing physically wrong with you. I mean they'll beat around the bush on that, but basically, that's what they're saying. And they keep running in—that panel, as an example, was half neuropsychologists and psychiatrists and half hard science.

So that they're—and the chair was a psychologist, so it's little wonder that that panel recommended no more hard science because that's too hard to figure out what has caused all of this in order to, a) begin to come up with treatments that are effective, and b) protect our troops in the future by not exposing them in the same way to the same conditions.

So—and in regard to those who are applying now, they play the game of divide and conquer on all this, and you're chasing a rabbit hole about what one particular symptom, what is the etiology of it, knowing full well that you can never pin that down. And that's the game that they put individual veterans in when they apply for benefits and file their claim for compensation, and that's not just for compensation because you have to be service-connected unless you are almost indigent in order to have health care. So it is a denial of all of the rights of these folks.

I was particularly shocked when I stumbled across this little puppy, and it's called VA DoD Clinical Practice Guideline, and it's from 2014. And in this, the whole—all of this is—the only thing missing in this bit of sophistry is a snake oil to wash it down, because it says nothing, produced at, no doubt, at great expense by VA and DoD, but doesn't do a darn thing to enlighten the individual clinician who is trying to help that particular veteran. I could perhaps say that more elegantly, but that's where it is.

We worked very hard with Chairman Benishek and with Chairman Miller in bringing along the toxic research—Toxic Exposure Research Act. And one of the reasons why we're so committed to that bill is not just for children, but also understanding that any one of these toxic bills has to be multi-generational, that we've got to rationalize this process if, in fact, we're going to get beyond the sturm und drung for every generation.

The—we've already—we are going through it now on burn pits, there was a major article that came out today that VA and DoD are stopping any further research into the burn pits, and they are blaming the Congress for not appropriating more monies and vice a versa.

Whatever the upshot is this, we need more research that is systematically, that is for real, into both toxicology, and even more importantly, the epidemiology of how these toxins manifest in the veterans' population.

I thank you for the opportunity, Mr. Chairman. I'd be happy to answer any questions.

[THE PREPARED STATEMENT OF RICK WEIDMAN APPEARS IN THE APPENDIX]

Mr. CHAIRMAN. Thank you, Mr. Weidman. Mr. Spataro, you are now recognized for five minutes.

STATEMENT OF RICHARD SPATARO

Mr. SPATARO. Thank you, Mr. Chairman, Mr. Chairman, Members of the Subcommittees. I am pleased to have the opportunity to testify on behalf of the National Veterans Legal Services Program. There are two topics I'll be discussing today: VA's handling of claims related to Gulf War illness, and the extension of the end date for the period during which a qualifying chronic disability must manifest in order to qualify for presumptive service-connection.

NVLSP has vast experience with veterans claims for VA disability compensation under 38 U.S.C. Section 1117, which requires the VA to pay compensation to Persian Gulf War veterans for 1) undiagnosed illnesses, 2) medically unexplained chronic multi-symptom illnesses, and 3) diagnosed illnesses that the Secretary determines warrant a presumption of service-connection.

It has been over two decades since Section 1117 was added to Title 38 of the U.S. Code, yet VA adjudicators still have difficulty adjudicating claims for the first type of chronic disability in particular: undiagnosed illnesses. In our experience, there are four common types of errors that the VA commits when adjudicating these claims.

The first type of error is VA failing to consider the favorable rules for presumptive service-connection for an undiagnosed illness when the veteran does not explicitly claim benefits under that theory of service-connection. This type of error typically occurs when the veteran claims entitlement to service-connection for a particular diagnosis the veteran thinks he or she has, but does not refer to Gulf War illness.

And the—if the evidence ultimately shows that the veteran's chronic complaints cannot be attributed to a diagnosis, the VA ad-

judicator sometimes denies the claim due to the lack of a diagnosed disability, which is a requirement for establishing service-connection under all other theories of entitlement.

Although VA adjudicators have an affirmative duty to consider all reasonably raised theories of service-connection, they often fail to consider the theory of service-connection for an undiagnosed illness when that theory of entitlement is reasonably raised by the evidence.

The second type of error is VA erroneously attributing symptoms that have not been associated with a diagnosed condition to a diagnosed condition unrelated to military service. VA then denies the claim on the basis that the veteran does not have an undiagnosed illness.

We have seen several cases like this in which a careful review of the medical evidence shows that contrary to the VA's finding, not all of the symptoms identified by the veteran are linked to a specific diagnosis.

The third type of error is VA denying the claim due to the lack of medical nexus evidence. Under Section 1117, a Persian Gulf War veteran is entitled to the presumption of service-connection for a chronic undiagnosed illness if certain requirements are met. In 2004, in *Gutierrez v. Principi*, one of NVLSP's cases, the CAVC emphasized that the medical evidence linking the disability to military service, or the Persian Gulf War, is not one of those requirements.

The VA, however, continues to erroneously deny some claims for service-connection for undiagnosed illnesses on the basis that no medical expert has linked the veterans' symptoms to Gulf War illness.

The fourth type of error is VA denying the claim due to the absence of objective indications of a chronic disability without considering non-medical indicators capable of independent verification. One requirement for establishing service-connection is that a veteran exhibit objective indications of a chronic disability.

Objective indications include both signs in the medical sense of objective evidence perceptible to an examining physician, and other non-medical indicators that are capable of independent verification. And that last part is the critical part. We have seen cases in which the VA erroneously denied the claim solely due to the lack of objective evidence perceptible to a VA physician without considering other non-medical indicators that are capable of independent verification.

Now I'll move on to the second topic. Under Section 1117(b), the Secretary must establish the period during which a qualifying chronic disability must manifest following service in Southwest Asia in order to qualify for presumptive service-connection.

After initially establishing a two-year presumptive period, VA has repeatedly extended the end date. Most recently, in 2011, VA extended the end date to December 31, 2016, due to scientific uncertainty regarding the time period in which Persian Gulf War veterans had an increased risk of suffering from chronic illnesses, as well as the fact that National Academy of Sciences reviews were still ongoing.

Little has changed with respect to the level of scientific certainty regarding Gulf War illness. Due to this continued state of uncertainty, VA should again extend the date of presumptive service-connection during which symptoms of a qualifying chronic disability must first manifest to at least December 31st, 2021, if not indefinitely.

I'd be pleased to answer any questions you may have. Thank you.

[THE PREPARED STATEMENT OF RICHARD V. SPATARO APPEARS IN THE APPENDIX]

Mr. CHAIRMAN. Thank you, Mr. Spataro. The written statements of those who have just provided oral testimony will be entered into the hearing record and we will now proceed to questioning.

Mr. McLenachen, based on testimony from many today, it is apparent that VA is not doing justice to presumptive claims-related to undiagnosed illnesses and chronic multi-symptoms, and chronic multi-symptom illnesses. What good are your quality reviews when, across the board, VA isn't correctly applying the law?

Mr. MCLENACHEN. I thank you for that question, Mr. Chairman. I am not ever going to come to these Committees and say that we are perfect in the work that we are doing, so I am not going to tell you that. I will say that we have taken a lot of steps to improve how we process these claims to include some of the suggestions that you have heard today, such as improved training, which we did just within this last fiscal year.

Training is now a part of our challenge training that we provide to new adjudicators. All adjudicators were required to take revamped Gulf War training beginning in October 2015, which is mandatory. I have heard the message about the DBQs. I intend to go back and look and see whether that is something we can improve on based on the suggestions that you have heard here today.

But we have extensive quality review programs, both locally and nationally, where we do look at these claims, to include something that we did in addition to those two programs, which is to do the focused review that is discussed in my testimony. So we do have a very robust quality review program where we look at processing of these claims. Having said that, I intend to look carefully at the testimony of the other witnesses, and carefully consider their suggestions.

Mr. CHAIRMAN. In 2015, the Board of Veterans' Appeals remanded about a fourth of these claims, nearly a fourth were granted, only 6 percent were denied, and roughly half remained unresolved. These same percentages are similar to 2016, so far. This indicates a problem in the handling of these claims. We want to know what you are going to do to immediately fix these problems.

Mr. MCLENACHEN. Mr. Chairman, I just want to challenge the idea that a remand means that VA did something wrong. In fact, due to the appeal process that we have, it is often because of the passage of time. Again, having said that, the goal is always to resolve the claim at the earliest point possible. And we have had some discussions recently about how we can do that better with the service organizations. If the Board points out errors that make it back to the regional office, we try to incorporate that in our training to the best that we can.

Mr. CHAIRMAN. Yeah. Well, Mr. McLenachen, will VA extend the presumptive claims deadline?

Mr. MCLENACHEN. We have a rule-making in progress that addresses that. Before I can provide you a definitive answer, we have to go through the rule-making process, but I can tell you we got a new IOM report just recently, which the Veterans Health Administration is looking at very carefully.

Mr. CHAIRMAN. Okay.

Mr. MCLENACHEN. I agree with what was said here today that the science has not really changed recently.

Mr. CHAIRMAN. Mr. McLenachen, according to Ron Brown, president of the National Gulf War Resource Center, on August 17, 2015, VA stated it would “do a statistically significant review of completed Gulf War claims to determine if there is a problem” in processing such claims. What is the result of that review?

Mr. MCLENACHEN. I will let Mr. Flohr address that.

Mr. CHAIRMAN. Mr. Flohr.

Mr. FLOHR. Thank you, Mr. Chairman. We did do that review. It was approximately 360 claims, it was a statistically significant number. We found that we had two claims which actually were improperly denied. We have taken action to fix those. And there were another 6, or a little more than 12 or so, where we either had an examination that was not sufficient, or an improper examination was done by VHA, and we are returning those to have those corrected. So our rate there was 94 percent accuracy.

Mr. CHAIRMAN. Mr. Flohr, can you provide that information to this Committee immediately upon completion of this hearing?

Mr. FLOHR. Yes. We can do that, sir.

Mr. CHAIRMAN. Very well.

Ranking Member Kuster, you are now recognized for five minutes.

Ms. KUSTER. Thank you, Mr. Chairman. Well, it appears to me that this is *deja vu* all over again. We are revisiting where we were with the Vietnam veterans. And it was shortly after I came to Congress that Secretary Shinseki worked on this presumption about Agent Orange and I think it, hopefully, has made a significant difference in the lives, certainly for veterans in my district in New Hampshire, and I really believe in following the science where it leads us, but sometimes we don't have it in a timely way.

And so I appreciate you being with us, Mr. Weidman, and I want to focus in on that, because it seems like we have a couple of different catch-22s that I am trying to catch up with and follow here.

One is that I am impressed by the data, and thank you for providing it for my district, about the reduction in the backlog on disability claims, the reduction in time that it takes for an average claim, and the improvement in accuracy of claims, but I am trying to reconcile that with this data that the VA denies 80 percent of claims filed by Gulf War veterans for conditions related to the war.

I mean, I meet veterans all the time that are trying to cope with this constellation of symptoms and it is very challenging, and so I am trying to determine if we believe in this, if Congress passed this presumption, why are we having such a hard time addressing, and is the 80 percent denial, is that these are somehow malingerers that are coming forward? I don't meet those people.

Mr. MCLENACHEN. So Mr. Flohr has some of that more specific data that we can provide to the Committee as far as actual grants and denials, specifically for subsets of the Persian Gulf war period. I just want to point out, however, that to some extent I assume that the 80 percent figure that we are talking about relates specifically to those Gulf War illness presumptions. In many cases, the veteran is service-connected for other disabilities that are diagnosed, and for that reason, there may be a denial on the basis of the Gulf War presumption.

Ms. KUSTER. I don't follow. I mean, if they are service-connected for something else, why would you deny this?

Mr. MCLENACHEN. Well, the condition may be diagnosable, is what I am trying to say, rather than undiagnosed. And for that reason—

Ms. KUSTER. So I guess that is kind of the catch-22 that keeps coming up in the testimony of our witnesses, is we have defined this illness around chronic undiagnosed illness, but as soon as they get a diagnosis, then they don't qualify. That seems like really counterproductive to our goal, which is servicing these veterans who so bravely and courageously fought for us.

So I guess—let me cut to the chase. Do you need something different from Congress? And this leads to this extension because I am confused, you are talking about the VA, this is in statute. I mean, we need to introduce a bill, right? You need a statutory change to keep this going?

Mr. MCLENACHEN. No, we don't. We have authority to establish a delimiting date for the presumption. The current delimiting date is that December 31st, 2016.

Ms. KUSTER. Which is going to be coming up on us pretty quickly. And what we learned from the situation with the schematic—is that what it is—heart disease. Ischemic, excuse me. That we didn't even know that, right? So I am concerned there may be something that we don't even know. And particularly with toxins, I have a big problem. And this isn't on you, this is on us as Congress and on the DoD, about these burn pits and the toxins that are—and I think one of our witnesses said it best, I want to protect future troops. I want to know what is happening.

So the science hasn't caught up with us. I am very concerned about a fixed date of December 31st, 2016. And I just want to make sure that if you don't get it done that we get it done here because we don't even know the constellation of illnesses that are out there and we want to serve our vets.

Mr. MCLENACHEN. We will have the regulation done. The last time that we extended the delimiting date, we did it by an interim final rulemaking, which allowed us to put it out as a final rule and then—

Ms. KUSTER. In a timely way?

Mr. MCLENACHEN. Yes.

Ms. KUSTER. So that people aren't stressing out over it.

Mr. MCLENACHEN. And we intend to do the same thing in this case.

Ms. KUSTER. And I do want to acknowledge the improvement that is being made, and, you know, we want to work with you to

make sure that we are serving our veterans. So, thank you for your testimony and thank you for the rest of you.

I yield back.

Mr. ABRAHAM. Thank you very much, Representative Kuster. I will now question the panel.

Mr. Morosky, in your written testimony, you note that part of the challenge with these claims is that the Gulf War Illness is an inherently difficult condition to diagnose and treat, because it presents itself as a host of possible symptoms common to many veterans that served in the Persian Gulf Region. As a doctor, I can understand that VA examiners are more familiar with evaluating a single condition that is clearly identifiable and unmistakable, but that being said, how do you suggest that the VA improve the quality of the examinations of veterans who served in the Gulf War?

Mr. MOROSKY. Thank you, Mr. Chairman.

So, as it has been pointed out, it is a bit of a catch-22 for veterans who are claiming the undiagnosed illness because it could be a host of symptoms that they are claiming. It could be chronic pain, chronic fatigue, or gastrointestinal problems, and these are all known symptoms that could be considered under the chronic multi-symptom, undiagnosed illness. However, when VA looks at the claim, instead of giving one disability questionnaire to one physician to look at and consider whether or not those symptoms are Gulf War Illnesses, they are parsed out and one DBQ goes to a physician to look at the gastrointestinal problem. Another physician gets the questionnaire to look at the fatigue. Another physician gets the questionnaire to look at the chronic pain.

And then, of course, when looking at them in a vacuum and not looking at it globally, what doctors do, as you point out, is to diagnose. So if the veteran comes back with diagnosis of Crohn's disease, fibromyalgia, and depression for those, they are no longer considered an undiagnosed disorder, and, therefore, they can't be considered undiagnosed illness, so they are not able to be adjudicated on a presumptive basis; whereas, if they were considered undiagnosed, they would have been adjudicated on an presumptive basis. So, since they are not, the claims adjudicators look into the service record and they don't see these there, and so they are denied.

Mr. ABRAHAM. So, how do you suggest fixing it, a different DBQ?

Mr. MOROSKY. Yeah. Sir, we would suggest a DBQ where, when symptoms are claimed by a Persian Gulf War veteran that are consistent when taken together with Gulf War Illness, that a single Gulf War Illness DBQ be given to a single physician who is trained to look for those symptoms and look at those globally; look at them holistically, so that the physician can then say, yes, this is consistent with Gulf War Illness. This veteran has an event which is serviced during the Persian Gulf War and then be able to grant on a presumptive basis in that way. So, a holistic view versus parsing out the symptoms and not looking at them individually.

Mr. ABRAHAM. I understand.

Any other VSOs wish to comment? Mr. Hearn? Mr. Weidman? Any suggestions as to how these examinations could be more productive?

Mr. WEIDMAN. Trying to parse it apart, when, in fact, you cannot separate the multi-toxic environment in which they were initially—had the problem originate is, you are never going to pin down what that silver bullet is. It just doesn't exist in environmental health science.

And VA knows that and that is why it is pulling it apart in order to come up with the wrong answer. The real question is, why haven't they done the epidemiological work on this population in a serious way that would give us some of the answers as comparing those who served in the Gulf versus those with the same MOS who served elsewhere during that timeframe, and they haven't done that in any kind of serious way. And once they do that, a lot of this will become clearer.

Let me just add that this—VA has the authority to have a shut-off date. They did the same thing with lung cancer having to do with Agent Orange and we finally took them to court and they had to lift that delimiting date, because they had zero scientific evidence—

Mr. ABRAHAM. And let me interrupt you. I apologize. I want your statement, but I want to ask one more question to Mr. Flohr.

Given what you have just heard, Mr. Flohr, how is VBA ensuring that the quality controls are sufficient to ensure the raters are held accountable if they rely on inadequate examination results for Gulf War veterans?

Mr. FLOHR. Yes, thank you for your question.

As recently as the end of 2014, we actually revised our training materials for our claims processors, with respect to Gulf War Illness. We put into our training system, every one of our claims processors, including not only rating specialists, but the other—the initial people who review claims. We were required to complete that by last September and they did so.

So we have updated it. We are always looking for ways to update our training to make it better where we find that there are problems with it.

By the same token, Veterans Health Administration revised their training for examiners who do Gulf War Illness claims.

Mr. ABRAHAM. And what about quality for purposes of STAR for a rating review, what is going on there?

Mr. FLOHR. Quality where? I am sorry, where?

Mr. ABRAHAM. STAR review.

Mr. FLOHR. STAR review?

Mr. ABRAHAM. Yes.

Mr. FLOHR. Do we know about our STAR review quality? It is—our overall quality is like 92 percent.

Mr. ABRAHAM. Okay. And I am out of time. I will ask some follow-ups in a written questionnaire.

As a follow-up, what about the 90-to-91 group; what is going on?

Mr. FLOHR. I don't think we have that quality by group. That is our overall quality rate.

Mr. ABRAHAM. We would appreciate it for the record, please.

Mr. FLOHR. Okay. Thank you.

Mr. ABRAHAM. Mr. O'Rourke, you are recognized, sir.

Mr. O'ROURKE. Thank you, Mr. Chairman.

I wanted to ask Mr. McLenachen to respond to Mr. Morosky's suggestion that you have one DBQ handled by a single physician to be able to look at this comprehensively, instead of breaking it out into separately diagnosed symptoms.

Mr. MCLENACHEN. It may have been before you joined us, I am not sure, but I committed to going back and taking a look at what we are using as far as a DBQ, to see if there are those types of changes that we need to make, so I will go back and take a look at that.

Mr. O'ROURKE. Okay. So your commitment is to review it; you are not necessarily committing to that process, which seems to make a lot of common sense to me. If we are concerned about what the Ranking Member referred to as a catch-22, that is, you begin to diagnose these individual symptoms, you are no longer—you no longer have an undiagnosed illness. That seems to be the answer to me, so I am not sure—why don't you tell us the factors that you will look at, as you consider the proposal; in other words, I am wondering why you can't just commit to adopting that as the way forward.

Mr. MCLENACHEN. Well, I would like to show up here for a hearing and have all the information I need to answer that type of question, but I don't have all that information with me right now. The best I can offer you is that I will go back and look at that specific issue and the recommendation and see whether that is something that we can and we should implement, and that is my commitment to you.

Mr. O'ROURKE. What is the argument against it?

Mr. MCLENACHEN. Well, based on what I am hearing, first, we have to confirm that that is the—that that is a real problem that veterans are experiencing, and if it is, then it is something that we need to fix. So, then, I would not disagree that it's something we need to fix.

Mr. O'ROURKE. Okay. And I am sorry to pursue you on this one, but it seems as long as we have everyone here, we might as well get to as close to the bottom of it as we can. You said you want to substantiate that veterans are really having this problem of these separate diagnoses. It seems like every single person up here has confirmed that that is the case. I don't think that you doubt their credibility on this.

Mr. MCLENACHEN. Not at all.

Mr. O'ROURKE. We don't, as the representatives of Gulf War veterans, doubt the stories we are told by our constituents, so that factor seems to have been eliminated.

I am very open to a counter-argument to the one proposed by Mr. Morosky, but unless there is one, I think we have to move forward. We can't, 25 years later, continue to extend deadlines or talk about this at another hearing. I have only been here a little over three years and it does not seem like we are making a lot of progress on it.

Not because of any lack of commitment, necessarily, on your part, but I do think we need to have a conclusion and a solution to this. And this doesn't solve everything, but I think gets to the catch-22 issue that so many of us have asked about and so many of the VSO representatives have highlighted.

So, all speed possible on your decision and I, for one, am sure, joined by the other Members of the Committee, would like to hear your response to that and would like to share it with the VSOs as soon as you have one. How long do you think it will take for you to get an answer on that?

Mr. MCLENACHEN. I will start looking into it today when I get back.

Mr. O'ROURKE. Okay. And when do you think we can hear back from you?

Mr. MCLENACHEN. I can't tell you exactly, but we are going to owe some information after this hearing, as far as what we have taken for the record. I think we can make it part of that.

Mr. O'ROURKE. Mr. Hearn, a question on a separate topic. Do you happen to know what the average age of a servicemember during the Gulf War was, 20, 21, 22?

Mr. HEARN. In 1990 and 1991, I don't know that number off the top of my head, but—

Mr. O'ROURKE. Early 20s?

Mr. HEARN. I am sorry?

Mr. O'ROURKE. Early 20s?

Mr. HEARN. Yeah, I would certainly say early 20s, but let's think about it like this, if you do the math on it, a person that was towards the tail end of their career could have served in Vietnam. The son or daughter served in Iraq or during Desert Storm or Desert Shield. And then the children of those people from the Gulf War. So we are talking about three generations now—three generations—of Americans.

And I saw this—there was an article that came out in Fortune just this week—they said 25 percent of recruits that had served in the military. So it is very possible that this type of situation occurred. We are talking about three generations of the same family could be impacted from serving in the same area.

Mr. O'ROURKE. Well, I wanted to ask you about a point Mr. Weidman brought up, which is how long it took for Vietnam-era veterans to have that presumptive condition awarded or recognized. And I wonder if someone who, let's say, was 20 years old in 1991 is 45 today, or if they were at the tail end of their career and they are in their mid-60s, if we are seeing different symptoms—in other words, cancers—as they get older. As this cohort ages, are we seeing more critical urgent issues that need to be attended to, that the urgency that I think was part of eventually recognizing the presumptive condition for Vietnam-era veterans?

I am going to, unfortunately, have to take your answer for the record, because I am out of time, but I am very interested in how we can add additional urgency as this cohort ages, based on the conditions that we are seeing.

Mr. HEARN. We will be happy to look into it and send it to you then.

Mr. O'ROURKE. Thank you.

I will turn it back to the Chair.

Mr. ABRAHAM. Thank you, Mr. O'Rourke.

Dr. Benishek, you are recognized.

Mr. BENISHEK. Oh, thank you, Mr. Chairman.

Welcome. Actually, I want to do a little more follow-up on what Mr. Weidman had to say. I think all of us here would like to know what is going on with this Gulf War Syndrome a lot better and, you know a physician doesn't like a vague diagnosis. I mean you want to be able to do a blood test and then a yes or no, right? We don't have that here.

And I think the point that he made is that more research needs to be done is the critical one here. And do you all, or are any of you are aware of what is going on in that department? Mr. Weidman, you mentioned, physically, the epidemiology studies that, you say, haven't been done. What is going on in the research of this Gulf War Syndrome?

Mr. WEIDMAN. The most useful research that is going on today is the CDRMP, the Congressionally Directed Medical Research Program, and the reason for that is that research and development at VA simply wasn't concentrating on research that would lead anywhere, if, in fact, they committed monies at all. You know, it is real—if you decide you want to find nothing and you work really hard at it, the likelihood is, you are going to find nothing, and that is exactly what VA has done here and in regard to other generations both, those who served in the recent wars as well as Vietnam.

What the Institute of Medicine has repeatedly, time and time again, has urged VA and DoD to start to mine the mountain ranges of data they have on all of us and they don't do it. And that is how you can really start to make a difference.

Let me just give you one example from Vietnam vets. Some of the most useful research that has been done was not directed from Washington, was not funded by Washington; it was individual clinicians in the field who were able to hustle some graduate students and did epidemiological work of Vietnam veterans who had served in Vietnam or Vietnam veterans who had not served in Vietnam and who was more likely to have prostate cancer, as an example. That is how we found out that prostate cancer among those who served in-country was almost three times that of the era vets.

That kind of work is simply not being done by VA for any generation as a systematic thing.

Mr. BENISHEK. I appreciate your answer, but I just want to get to a couple more items. Is there currently a registry for people who complain of Gulf War Syndrome symptoms?

Mr. MCLENACHEN. Yes, there currently is a registry program.

Mr. BENISHEK. I don't understand, though. Do you object, personally, to extending the dates of eligibility for this, in view of the fact that there is a lot of vagueness to the diagnosis here, and that more time needs to be—I think more research needs to be done, than to have this cutoff date be an issue for people when there is so much uncertainty as to what the real etiology is. I mean it could be that there is some bacteria like TB or something that has just not been found that could be really the answer here.

I don't know what it is, but there is a lot of uncertainty.

Mr. MCLENACHEN. I have no personal objection. We have to go through the rule-making process, but the reason why we did the five-year delimiting dates was because of that uncertainty in the medicine and the science. So, that still exists today, so if that reassures you—

Mr. BENISHEK. Are there cutoff dates to other—is this a common thing that VA does, to cut off dates for application for eligibility?

Mr. MCLENACHEN. No. The statute that we are dealing with here gives the secretary authority to establish this particular cutoff date.

Mr. BENISHEK. Does anyone else from the VSOs want to comment on what is going on? Mr. Morosky?

Mr. MOROSKY. Sir, we absolutely agree that more research is warranted here. Right now, the only presumptive disorders for Gulf War Illness are either certain infectious diseases or you have this chronic multi-symptom unexplained medical illness.

Under that, there are a lot of diagnoses, as I explained earlier, that come out of those symptoms. We would like to see research as to whether or not those diagnoses that are commonly given for those symptoms ought to be presumptive conditions in and of themselves. So if the gastrointestinal problems are being diagnosed as IBS, maybe IBS should also be a presumptive condition, which would lead to fewer denials, but that is what research would be for.

Mr. BENISHEK. Mr. McLenachen seemed to indicate that a lot of the people were denied the undiagnosed disability, but were given a diagnosed disability. Is that the case? Or maybe I better take that for the record, because I am obviously running over time, but if you could give me the percentage of those numbers for the record, I would like to know that.

Mr. FLOHR. With respect to that, when the first Gulf War veterans returned from the Gulf and started complaining of multiple symptoms, for which a diagnosis could not be established, VA had no way to compensate them because our statutory authority is to provide compensation for disability resulting from injury or disease. So we worked with Congress, the Congressional staff, and that worked in the 1994 legislation that created Gulf War presumptions and the whole Gulf War process.

Mr. ABRAHAM. Mr. Flohr, we are going to interrupt you. The time is out, but if you'll put that in for the written record, we would appreciate that.

Mr. FLOHR. Okay.

Mr. ABRAHAM. Mr. Walz?

Mr. WALZ. Thank you, Mr. Chairman, and thank you for all being here.

I am going to go off this issue on the research and the cutoff dates. I think a little history is warranted here. Last summer when the Agent Orange Act was coming to expire, 53 of us co-sponsored that and it ended with a whimper without even a floor vote. And the argument we made was, is that the research wasn't in yet and we needed a little more time.

That piece of legislation required the National Academy of Sciences to do a meta-analysis of all the research that was being done out there and compile that. I asked last summer, at least extend it to March until that study came out. Well, it came out last Thursday, again, with a whimper, and in that study, it showed a connection to bladder cancer and thyroid problems with Agent Orange.

My question is, now, because that expired and because there is no authority of that piece of legislation, do you have, under Title 38, to do presumptions now for bladder cancer?

Mr. MCLENACHEN. Yes, the secretary has very broad authority under Section 501 of Title 38.

Mr. WALZ. Is it naive of me to think that after 25 years of that and the biennial reviews by the National Academy of Sciences, a meta-analysis of all the research that was out there, did we just do a wonderful job of picking the last two things they are going to find on the very last report that they will do? Would it have not made sense to extend it on for five more years to continue it—and I am going to segway into this that he has that broad authority; that broad authority, then, exists for Gulf War Illness.

Mr. MCLENACHEN. So, for Gulf War Illness, there is actually a public law, Public Law 105–368 that was enacted in 1998 that requires both NAS and the secretary to report to the Congress on scientific study results that would impact presumptions for Gulf War veterans. That law still exists and the secretary still considers that information in creating presumptions.

Mr. WALZ. And I don't want you to speak for the secretary on this, sir. I know your issue is where you are at and giving us the answers.

What will it take now for Vietnam-era veterans, with exposure to Agent Orange, to get bladder cancer and thyroid issues, which are going to be multi-symptom, which aren't going to be difficult, what will it take now for them to get that covering that presumption done? What are the next steps involved here?

Mr. MCLENACHEN. So, the secretary is required to consider all medical science to include the National Academy's information that they provide, and based on the information that he considers, there is a workgroup that is established in the Department of Veterans Affairs whenever these presumptions are considered; it includes VHA experts, legal experts, our benefits experts. And they get together and prepare a recommendation for the secretary.

Mr. WALZ. And that is what happened with Parkinson's. We did—that same process went through for Parkinson's and then the Nehmer claims, they came following that.

Mr. MCLENACHEN. Yes. Whenever a presumption is created, it goes through this process and if the science is there to support it, then the secretary will create a presumption as to—

Mr. WALZ. Am I hearing you right, that it is different for the Gulf War, then, that it is for Agent Orange?

Mr. MCLENACHEN. Well, you had a concern about the expiration of the law that required us to go to NAS and then do a rulemaking within a specific period of time. Now, that law expired for the Agent Orange presumptions.

My message to you is, that the expired authority has no real impact for us, because the secretary has separate authority to do it on his own, as far as Gulf War veterans, we are still required by law to receive those reports from NAS and consider them. So that gap does not exist for Gulf War veterans.

Mr. WALZ. But I would suggest to my colleagues here, why were we so willing to give up to the executive branch the authority to make these decisions, and why we gave away our power with the

expiration of the Agent Orange Act. Now it makes it very difficult for us to go back and make the case here so that we can have a say, so that witnesses can have their input into this in a more direct channel.

And this is no condemnation on you; you are following the rules as they are written for you. This is a soliloquy maybe to us that I think we need to take more of the lead on this. I think we need to make sure, because I think as science moves along, the research possibilities are still out there, and I think we are shutting doors and around here, once a door is shut, it is dang hard to get it back open again, and I think that is a mistake that we have laid the groundwork for. And this may give us the opportunity, through the Toxic Wounds Act, Mr. Benishek and others, maybe is an opening to that.

So, I understand and I know you will do what is directed and you want to care for the veterans. I think we need to give you the tools to do that. I think the broad tools the secretary has are wonderful and I cannot say enough when then-Secretary Shinseki made the ischemic heart, the Parkinson's, it was the right thing to do, but that was a long fight.

And now I feel like if you have bladder cancer and you are listening to this and you have thyroid issues where you were told it wasn't connected, as of Thursday, I am going to say it was. And my suggestion is that I wish we, as a Congress, could say it was. So, more of a clarification.

I thank the Chairman for your time.

Mr. ABRAHAM. Thank you, Mr. Walz.

Mrs. Walorski?

Mrs. WALORSKI. Thank you, Mr. Chairman.

Mr. Spataro, I want to direct this question to you, but I want to tell you a quick story about a veteran in my district. She joined the Army in 1990 and was first deployed to the Gulf as a part of Desert Storm and eventually was deployed to Desert Storm. She eventually left the Army in 1993, but after leaving the service, she began to have stomach pain, severe headaches, muscle pain, irritable bowl syndrome, and trouble sleeping.

In order to cope with these issues, she took over-the-counter meds, not thinking those conditions were a result of her military service. Years passed before she realized that all her medical issues were caused from her time serving in the Army.

In 2011, she applied for benefits at the VA for Gulf War Syndrome, but was denied about a year later. In 2014, two years after her initial denial and appeals letters to the VA, she finally got an exam for Gulf War Syndrome. After three years of battling VA, she received partial benefits for her migraines and irritable bowl syndrome, but not for the rest of her medical issues.

Her issues have been so debilitating that she had to quit her job. In her letter, she says, "Finally, on February 25th, 2015, I walked away from my job, my source of income, and the only source of reality that brought meaning to my life and amidst of pain and hurt, besides my family." And this is—I am going to quote her. Here's actually what she said to me in her letter, "I was more disappointed than surprised, after all, to the VA, we, as veterans, are nothing but a money business. We are numbers on a piece of paper

with no face. The VA denies claims or takes forever to answer them, hoping that we veterans will die before they come up with an answer. A VA representative advised me to write a letter to the VA telling them of myself, hoping they would think of me as a person, instead of a gold digger—and gold digger came from the person at the VA.”

Our veterans should not feel like gold diggers when they seek the help for the benefits they deserve. They shouldn't be treated just like another number on a piece of paper. And I wanted to tell you this story because it is what I hear from veterans almost every day.

So, my question to you, Mr. Spataro is, in a case of this veteran from my district, many of her debilitating issues were denied by VA. Do you have an example of a case in which VA erroneously attributed symptoms of an undiagnosed illness to a diagnosed disability? And you kind of alluded to this before, but can you kind of share a little bit more in reference to this case?

Mr. SPATARO. Yes, Congresswoman. It does seem like a fairly common problem that we see. An example where VA has attributed a symptom—an undiagnosed symptom to an illness, a case I had, for example, the VA—the veteran had liver problems. Testing showed—blood testing showed issues with his liver and the VA actually found that the veteran had Hepatitis C and we were flabbergasted.

The veteran told me, “I don't have Hepatitis C. Why was I diagnosed—why is the VA saying I have Hepatitis C?” We reviewed the record in the veteran's case, and we noticed that there was another veteran with the veteran's same name who had Hepatitis C. His records had been erroneously associated with that veteran's claims file, and just carefully looking at it, you would have seen that the medical record numbers, the Social Security numbers were different, but that is the kind of error where there might be incorrect medical records associated with a claims file.

Other times, it just seems that the VA adjudicators are very quick to overbroadly interpret medical records and medical evidence without very carefully looking at and separating each symptom and seeing if there is—that a doctor has specifically attributed a diagnosis to each symptom.

Mrs. WALORSKI. Yeah, I appreciate it.

And Mr. McLenachen, did you recognize this issue? When you came to this hearing today, did you expect this hearing to be what you are hearing from Members of Congress, and even in my case, a specific issue of veterans that we deal with every day, or did you think it was going to be about something else? Were you aware of the fact that this was going to be specifically about all of these “undiagnosed diseases” and this Gulf War Syndrome?

Mr. MCLENACHEN. Yes, that was the subject of the hearing.

Mrs. WALORSKI. So, what do you do when you leave here? And you hear all this information and testimony, we have questions, we have numbers, we have all kinds of unanswered questions. Many of us are I think left with this issue of how quickly can you correct this?

Is there something that is correctable or is this something that is going to take another action of Congress to fix?

Mr. MCLENACHEN. Well, as I committed to Mr. O'Rourke, what I do is, when I am here and I hear these issues, I go back and I look into it. The DBQ is a good example. I wish—if that is the problem, I wish we could fix it overnight, but it requires coordination with VHA. We have to do the public notice that is required through the Paperwork Reduction Act.

Mrs. WALORSKI. Do you think that it is something that can be fixed, though, inside the VA without additional action from Congress?

Mr. MCLENACHEN. Yes.

Mrs. WALORSKI. Okay. I appreciate it.

Thank you, Mr. Chairman. I yield back.

Mr. ABRAHAM. Thank you, Mrs. Walorski.

Dr. Roe?

Mr. ROE. I wish Mr. O'Rourke were still here. I went to Dr. Google and found out that during the Persian Gulf, it was the oldest Army that we have had since the Civil War, age 27, and six years older than average Vietnam, because a lot of reservists, I think, were called up as opposed to when I was in the service, it was mostly drafted individuals.

I will start out by saying, you cannot have too much information; it is impossible to have too much information. I think you just extend the date, at least five years, or maybe indefinitely to study this issue.

I would disagree with Mr. Weidman on one thing, though. Environmentally, you can specifically find—we may never in this case and probably won't—but you can find an environmental substance that is the cause of certain problems. There is no question. I have seen that over and over again.

The problem with this condition—and you have three doctors up here—is headache, fatigue, chronic pain, and GI issues. I mean we make our living seeing that and people never got near the Persian Gulf.

And it is really hard—and I think, Mr. Weidman, you hit the nail on the head when you say we have to look—there may be a cohort of people in Iraq that you could study. There certainly are a cohort of people who never deployed, who were military age, who never deployed. And why we would stop investigating that is beyond me, when we don't have a clear ideology of what this is.

So, I am really going to strongly encourage the secretary, if they have the discretion to do that, to do that, to extend this date to get more information, because we want to get it right. I think everybody said up here, look, you served the country and if something in your service caused you a disability, we need to compensate that disability. It is that simple. If it didn't, we don't.

Right now we don't have the information to say one way or the other, and to play semantics with words bothers me. Whether you call it Gulf War or whether you call it whatever, you are still talking about the same thing and to presume somebody—I mean, to make a presumption based on how the verbiage is, may be silly. I think it doesn't make sense to me.

I want to encourage us to do that. It is a very, very difficult thing to pinpoint when you—and I am sure Dr. Abraham and Dr. Benishek, too, will attest to this—two things that made me the—

that frustrated me the most in practice was if we didn't know what was wrong with you, we just said you were nervous or you had a virus, when we didn't know what the problem was. And that is sort of what has happened with these veterans, I think.

I think we need to study it, make the presumption open-ended. I don't think we need to stop at the end of this year. It makes no sense to me to do that.

So, until we get more information, that is really all I wanted, and I am open to any comment from any of the panel Members. You have been a great panel. Thank you for being here.

I mean, you are welcome to comment or I will yield back my time.

Mr. MOROSKY. Thank you, Congressman.

You know, as you pointed out, there are a group of disorders which can be common in the general public, as well. I think the way we look at it is, when it is taken together and put together with this event in service, which was service in the Persian Gulf war, and you start to see it over and over again as a cluster of symptoms, which is what we look at when we talk about Gulf War Illness, as opposed to just parsing them out.

And if you would use an example of say, TBI, we see a lot of veterans—that is a signature of the current era war. You might have a veteran who comes in and says, you know, I am experiencing some dizziness, I have some memory loss and I have some sleep problems. If you looked at those individually, you might say, oh, you have vertigo or, you know, you have some sort of a cognitive disorder. But when you look at them as a cluster and then you look back in the record and say, oh, you have blast exposure—

Mr. ROE. That is a little different, though—

Mr. MOROSKY. —then that makes sense.

Mr. ROE. —you can specifically point to an etiology there, where the veteran was within 50 meters of a blast or wherever. That is a lot easier than this one, than Gulf War Illness—Syndrome. It is much easier, I think.

Mr. MOROSKY. I agree, but I just—the comparison is there, if you were to look at service in the Persian Gulf War, if we are going to assume, because there is already a presumptive basis for chronic multi-symptom disorder, if you were to look at that as an event in and of itself, but I agree with you that it is not a perfect comparison.

Mr. ROE. Here is where Mr. Weidman is absolutely correct. Here's a blast. That is definitive. We know it happened and document it, no problem. There may be people who have those symptoms that you—look, I probably have had all of those symptoms at one time or another in my life and probably everybody at the dais out there has also had most of those symptoms. You could have those symptoms and be in Iraq and not have Gulf War Syndrome. I mean that is the problem that you get into, is that these are so common that it makes it—it is extremely difficult of all the—even more so than Agent Orange, this much more difficult to nail down, I think, than Agent Orange is. Agent Orange, basically, I think we have the science, as Mr. Weidman clearly pointed and Tim pointed out a minute ago—Mr. Walz did. Here, we don't have that and that is why it is foolish to stop studying this.

With that, I will yield back.

Mr. ABRAHAM. Thank you, Dr. Roe.

And I am going to start a second round of questioning, because I have a question and I want it answered. I will start.

Mr. McLenachen, you stated that one of the challenges faced by the VA is making the call as to whether a diagnosis is appropriate before granting an undiagnosed illness; however, under *Joyner v McDonald*, it is inappropriate for VA to engage in this type of process of elimination. So why is the VA insisting that a diagnosis first be ruled out? I am a little confused there.

Mr. MCLENACHEN. Well, I guess the problem is we are talking about different types of claims. I mean if VA gets a claim and an individual doesn't specifically claim that these Gulf War presumptions apply and we are looking at the totality of the claim to grant what we can, it may be that that is what takes us down that direction of granting something that is diagnosed.

Brad, do you have anything that you want to add?

Mr. ABRAHAM. So, why does a veteran have to specify Gulf War specifically? Again, I am somewhat in the gray there.

Mr. FLOHR. If I may say, the problem with undiagnosed illness is that—

Mr. ABRAHAM. Well, all three areas of entitlement have to be considered. You understand that, right?

Mr. FLOHR. Of course.

Mr. ABRAHAM. Okay.

Mr. FLOHR. Yeah. But when we schedule someone for an examination who claims various symptoms which have not been diagnosed, the first thing doctors do, right, is try to figure out what the diagnosis is, because if they can't, they don't know how to treat it appropriately.

So, when they cannot come up with a diagnosis, then what we are looking for is a VHA or a contract examiner to say the veteran has an undiagnosed illness of the respiratory system, of the cardiovascular system, whatever it may be. But if they diagnose something, sinusitis, bronchial asthma, that becomes a disability and then the standard rules of service-connection apply. It has to be a current disability. It has to be something that happened in service. And it has to have a relationship between service and the current disability.

Mr. ABRAHAM. When you start the exam, is that veteran flagged as a Gulf War veteran or no? Yes?

Mr. FLOHR. Oh, no. When they file their claim, we get their service records. We have their DD214. We know they are a Gulf War veteran.

Mr. ABRAHAM. But does the examiner know that?

Mr. FLOHR. They should, because they—I think so. On the—when we schedule the exams, they have that information, yes.

Mr. ABRAHAM. Okay. So why wouldn't the examiner consider an undiagnosed illness in that case?

Mr. FLOHR. If the veteran is only complaining of constellation or several symptoms, rather than the veteran claiming a specific disease—

Mr. ABRAHAM. By my definition, that is an undiagnosed illness if he has a myriad of symptoms, but you can't put a diagnosis on it. Well, by definition, to me, that is an undiagnosed illness.

Mr. FLOHR. Correct. See, our claims processors are not physicians. They are not scientists. They can't make that diagnosis of an undiagnosed illness themselves. They need a physician to tell them that. They need a physician to say, this veteran has an undiagnosed illness. We can't do that ourselves.

Mr. ABRAHAM. So, claims processors are just really not quite sure how to handle the undiagnosed illness; is that what you are saying?

Mr. FLOHR. I am not saying we don't know how to handle it. It is a problem because, generally, they end up being diagnosed with a disability, rather than an undiagnosed illness.

Mr. ABRAHAM. Is that appropriate in all cases?

Mr. FLOHR. Not in all cases, but quite often, that is what happens.

We used to get—under—former Under Secretary Hickey used to get emails, 10, 15, 20 a day from Gulf War vets saying, I don't know why I have been denied for my presumptive conditions and they say I have got sinusitis, I have bronchial asthma.

Those are not undiagnosed illness. Those are diagnosed illness and then they have to be associated somehow with their service, rather than being a presumptive.

Mr. ABRAHAM. Mr. Hearn, What is your take on that answer?

Mr. HEARN. Well, it is a little bit like the insurance commercials when there is Tarzan and Jane and they say, well, you know, swinging around the jungles that is what they do. It is the same way with doctors to a certain extent, because it is in your DNA, right; make a diagnosis. That is what you do. Nobody wants to take their car to the mechanic and have the mechanic come back and say, I don't know what it is. It is the same way there.

But the other problem is, is that what we have seen time and time again in doing our quality review checks is that there really ought to be a culture of when the rater looks at it, when the doctor looks at it, what can we do to get the benefit to the veteran, not what does a veteran have? Those are two different thought processes.

And a lot of times—there is nothing on the DBQ right now that says, is this veteran a Gulf War veteran? They go to the VBMS and it says that they would have to go all the way down—assuming that the VBMS isn't mislabeled—and look for the 214 to show that the veteran has, you know, the Iraqi Campaign Medal, the Kuwait Liberation Medal, the Expeditionary Medal. So, there are all these parts that are going into this and it is inherently gray, and that is what the problem is.

You know, I understand when they say that—and I guess I am a little bit confused because VA has said that a lot of those remands, that was time-constricted or that was because of the lapsing of time. But remember that we are trying to get something service-connected here, so I don't know where the time lapse is going to cause the problem where you are going to end up getting remanded.

Now, if it is an issue where we are trying to get an increased rating, then, yeah, you have dated exams and you have other things that are going into play.

So I think you have kind of got, you know, a mountain of things that are happening here. One is that we need to train the doctors. It is not right that veterans are being told by doctors that they are malingering; that is not fair. And you have to get them to get out of that DNA of diagnosing people, you know. And I think from there, if we can start tackling that issue, maybe we can start moving forward.

Mr. ABRAHAM. Thank you, Mr. Hearn.

Ms. Kuster?

Ms. KUSTER. I am just wondering—just to continue this conversation—would it help if we changed the underlying presumption? Like, we have created this catch-22. As a matter of public policy, it sounds like it is an unintended consequence of what my colleagues, before I got here, were trying to do. We were trying to help Gulf War veterans who had a constellation of symptoms and we didn't have the science and the words to catch up with what that should be called.

And we have created—and we are putting the VA between a rock and a hard place. We have asked them—we have defined it as undiagnosed and then, I agree, when you have sinusitis or something else, and you go to get the benefits based upon that, that is no longer undiagnosed.

But the rest of the constellation, we still don't know the where or why or how. We know the wherefore; something to do with what was going on during that service. So, I guess it seems to me the short-term solution is—and we have been talking up here about a bipartisan letter urgency the secretary to move toward this single DBQ, but we may need to also unravel the catch-22 that we have created in our attempt to help Gulf War veterans. Because I agree with Mr. Hearn, our goal is to help them, but we have created these boxes where you start checking and it creates a problem.

I want to get at, if we could, with either of our witnesses from the VA, that the science behind this and what is helpful to you. Who do you rely on and is the National Academy of Sciences or anyone else starting to look into what Mr. Weidman raised, which is, you know, my concern is going forward. We are exposing our troops to toxic chemicals and waste that we do not understand the significance of.

I have had a respiratory illness myself based upon a trip to Alaska during a volcano, okay, and my doctor has had a hard time analyzing that and determining that. But I knew I got on a plane. I was in a volcano. I was in the—you know, I ingested the ash, which is crushed glass. It got in my lungs and I was sick; now, I am better.

So, who are we looking to? What is the state of the science? And what could we be doing to encourage more science to determine the causation on this?

Mr. MCLENACHEN. Unfortunately, I think we are generally going to have to defer to the Veterans Health Administration. I know you had Dr. Clancy here a couple weeks ago and she provided some testimony on that specific issue, so we will defer to her on that.

However, Brad does have a close relationship with the National Gulf War Resource Center. He meets with them every two weeks or so, I believe, so he may be able to add some additional information.

Ms. KUSTER. Sure. Yeah, it would be helpful to know what they are doing at this point.

Mr. FLOHR. Yes, we do work with them. Frankly, we have bi-weekly calls and meet with Ron Brown and Jim Bunker in person quite often.

VA also has a—this is statutory, I believe—a Gulf War Research Advisory Committee that meets regularly. They recommend research and VHA has an Office of Research and Development. They look at the recommendations. If they have funding to do the research that is being requested, they do that research.

So it is not a matter that we are sitting around not doing anything.

Ms. KUSTER. I am concerned about this decision of IOM to recommend not researching it and it sounds as though the panel might have been skewed toward, this is all in your head, which is not where we are coming from.

Mr. FLOHR. I know there was a lot of concern about that among the Gulf War Community—

Ms. KUSTER. I think it may be something that we can look into in a bi-partisan way of whatever needs to be done to keep this research moving forward, because, again, *deja vu* all over again, what we went through with Agent Orange, there were symptoms and parts of illnesses and new illnesses that we didn't even know at the time. And I would have to believe that there is something like that going on here, as well.

So, I will yield back, but I would love to work with my colleagues on the Committee on that. Thank you.

Mr. ABRAHAM. Agreed. Thank you, Ranking Member Kuster. Chairman Coffman?

Mr. COFFMAN. Thank you, Mr. Chairman.

Mr. Weidman, as a Vietnam veteran, you are probably familiar with the way Agent Orange claims were handled by VA. As I recall, presumptive conditions were frequently denied until VA was forced to resolve them under a *Nehmer* lawsuit; is that about right?

Mr. WEIDMAN. That is correct, sir.

Mr. COFFMAN. Mr. McLenachen, does VA need to be sued in order for the department to properly address presumptive claims pertaining to the 25-year-old Persian Gulf War?

Mr. MCLENACHEN. I would not encourage that. No, I don't think it is necessary.

I think we are dealing with something—I think the point was made earlier that we are dealing with something a little different here. Agent Orange presumptive conditions are specific conditions and, yes, we have been operating under the consent degree from the *Nehmer* Court for a long, long time, but here, as I think we have all recognized in this hearing, we are dealing with something that is much more difficult, which is the undiagnosed illness issue.

Can we do better? I believe we always can, so we will try to do that.

Mr. COFFMAN. Now, Mr. McLenachen, it seems to me that the 2004 Gutierrez case underscored this very issue, citing VA's "clearly erroneous standard of review" and that the veteran was not required to produce evidence "specifically linking his disability to the presumptive condition in his claim."

Are you familiar with this case?

Mr. MCLLENACHEN. I don't recall that case specifically.

Mr. COFFMAN. I am. So you are telling me that, as a former general counsel, and the guy who is in charge of this entire issue, you are not familiar with this court decision? If that is the case, perhaps you are the wrong person for the job.

Are you really not familiar with this Court decision that is foundational to this issue?

Mr. MCLLENACHEN. I assure you I will go back and refresh my recollection.

Mr. COFFMAN. Okay.

Mr. MCLLENACHEN. Yes, I am the right person for the job.

Mr. COFFMAN. Well, Mr. Chairman, I just want to thank you for and thank the staff for holding this joint Committee, and I just want to say that as a Gulf War veteran, I am just really disappointed that the law was passed that—by the Congress of the United States, that a specific set of conditions was supposed to be presumptive and yet the VA does not seem to be following along.

I am disappointed, as well, as the fact that I don't think the VA has made best efforts in terms of research on this issue.

Mr. Chairman, I yield back.

Mr. ABRAHAM. Thank you very much, Mr. Coffman.

Well, ladies and gentlemen, on behalf of the Oversight and Investigations and Disability Assistance & Memorial Affairs Subcommittees, I thank you for your testimony. I appreciate all the witnesses coming here today to discuss what has turned out to be a very, very important issue.

Unfortunately, the medical evidence indicates that some Gulf War veterans are developing serious illnesses such as brain cancer, multiple sclerosis, amyotrophic lateral sclerosis, and Parkinson's disease at relatively young ages. Moreover, the testimony we have heard today raises serious concerns about whether VA is accurately processing claims for veterans, who are suffering from Gulf War Illness, particularly those veterans who served during the first Gulf War.

It is especially hard to understand why VA denies at least 80 percent of claims for undiagnosed illness and chronic multi-symptom illness conditions, even though there is a presumption of service-connection for those veterans who served in the Southwest Asia theater of operations.

I intend to continue to work with the department, my colleagues on both of these Subcommittees, and the stakeholders who took their time to present these concerns today, to ensure that veterans who are suffering from these serious diseases receive the benefits that they have earned.

So, again, thanks to everyone for being here with us today. As initially noted, the complete written statements of today's witnesses will be entered into the hearing record. I ask unanimous consent that all Members have five legislative days to revise and

extend their remarks and include extraneous material. Hearing no objection, so ordered.

I thank the Members and the witnesses for their attendance and participation today. This hearing is now adjourned.

[Whereupon, at 12:04 p.m., the Committee was adjourned.]

A P P E N D I X

Prepared Statement of Chairman Coffman

Good afternoon. This hearing will come to order.

I want to welcome everyone - especially our good friends from the Subcommittee on Disability and Memorial Affairs - to today's joint hearing regarding VA's handling of disability claims for Persian Gulf War veterans. As a preliminary matter, I would like to ask unanimous consent that a statement from Mr. Ronald Brown, Gulf War veteran & President of the National Gulf War Resource Center be entered into the record. Hearing no objection, so ordered.

This hearing is the second part of the committee's two part series on the 25th Anniversary of the Persian Gulf War, a war in which I served. Today we will examine VA's own data that reveals a 16% approval rate and an 84% denial rate for claims of Gulf War veterans for undiagnosed illnesses and chronic multi-symptom illnesses - both presumptive conditions under current law. VA often seems to deny these claims because it demands to know the specific cause for the 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 critical point to understand is that veterans cannot receive VA care for symptoms of Gulf War Illness when the majority of those claims are denied by VA.

We will also discuss former Under Secretary Allison Hickey's email citing her "concern that changing the name from [chronic multi-symptom illness] to [Gulf War Illness] might imply a causal link for veterans who served in the Gulf." Ms. Hickey's official email exposed VA's efforts to block not only the use of the term recommended by the Institute of Medicine for Gulf War Illness, but also VA's practice of requiring causality for GWI claims, even though, again, presumptive conditions do not require causality.

We also want to know more about an internal VA email - which has been provided to today's panel - that reveals claims evidence has been lost even though VA's system told veterans that such evidence was received. This is not particular to Gulf War veterans, but important regarding claims processing in general.

I want to also mention that last Friday, March 11th, VA held a Community of Practice call to discuss issues related to our subcommittee's hearing held on February 23rd. The call included more than fifty participants, and it discussed how to improve care for veterans suffering from Gulf War Illness. Unfortunately, the majority of the attention was given to a presentation by Dr. David Kearney regarding chronic pain, with what seemed to be an emphasis on PTSD - and the use of mindfulness as a method of treatment for Gulf War Illness. The call, coordinated by Dr. Stephen Hunt, shows that VA still clings to its often criticized efforts, and it contradicts his testimony from February 23rd, leading me to believe veterans suffering from Gulf War Illness will never receive appropriate care while Dr. Hunt is at all connected to the issue. While the conversation during Dr. Hunt's call warrants additional comments, I'll save that for a later time.

Before I turn to my friend, Ranking Member Kuster, I want to highlight that the invitation for this hearing specifically cited our interest in discussing "veterans who served in the Persian Gulf War" and yet, VA's testimony has lumped information from 1990 with the current OIF/OEF veterans in an apparent effort to reflect better statistics than those specific to our issue today.

With that, I now yield to Ranking Member Kuster for any opening remarks she may have.

Prepared Statement of David McLenachen

March 15, 2016

Opening Remarks

Chairman Coffman, Chairman Abraham, ranking members Kuster and Titus, and Members of the Committee, thank you for the opportunity to discuss how the Department of Veterans Affairs (VA) processes Gulf War Veterans' compensation claims. My testimony will provide an overview of VA's processing of these claims, its training and quality assurance efforts, presumptive service connection, the statutory authority for establishing presumptions of service connection, and the science and rationale behind such presumptions.

Gulf War Claims Processing

This year marks the 25th anniversary of the start of the Gulf War. The initial conflict lasted from August 1990 until February 1991. However, neither the President nor the Congress has declared an end to the Gulf War, so men and women, who serve in the Southwest Asia theater of operations, to this day remain entitled to presumptions of service connection based upon their service.

As of the end of fiscal year (FY) 2015, almost 7.2 million Veterans served during the Gulf War period. Through FY 2015, over 1.8 million Gulf War Era Veterans were in receipt of disability compensation (approximately 26 percent of Gulf War era Veterans receiving the benefit), the highest percentage of Veterans in receipt of compensation from any era, wartime or peacetime. Each Gulf War Era Veteran averages greater than six service-connected disabilities, again, more than any other era, wartime or peacetime. The most prevalent disabilities for Gulf War Era Veterans include tinnitus, knee conditions, back conditions, post-traumatic stress disorder (PTSD), migraines, and sleep apnea. Claims from Gulf War Era Veterans now make up the majority of claims received by VA.

VA has made considerable progress in its claims processing performance, including claims from Gulf War Veterans. It has reduced its backlog of pending claims by approximately 86 percent, from its peak of 611,000 in March 2013 to 83,226 as of the end of February 2016. VA has also reduced the average days waiting for a decision to 93 days, which is a 189-day reduction from a 282-day peak in March 2013.

Training and Quality Assurance

The Veterans Benefits Administration (VBA) is constantly looking for ways to improve the service it provides to this cohort of Veterans. We work 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 Institute of Medicine's biennial update on Gulf War issues. We also work with VHA and the Department of Defense in joint workgroups that research occupational and environmental hazards coincident with military service. We collaborate 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 bi-monthly meetings.

VBA has a national quality review staff, as well as quality reviewers in its local regional offices, to ensure that the employees correctly process and decide claims for Gulf War illness. As agreed with NGWRC, VA conducted a special-focused review of decisions on claims for Gulf War-related illnesses for fiscal year 2015. This review showed a 94-percent accuracy rate. In the last year, VBA updated training for claims processors on Gulf War illness, including such topics as medical examinations, evaluating disabilities, assigning effective dates, and awarding special monthly compensation. Beginning in October 2015, we required all decision makers and quality assurance staff to complete these training modules.

VA has implemented a number of other initiatives to improve Gulf War claims processing. 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.

Gulf War Illnesses

Service connection for undiagnosed illnesses or 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, 2016.

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).

Service connection is also warranted for Veterans who contract certain infectious diseases, such as malaria, Q fever, and West Nile virus. In addition to Gulf War service, service in Afghanistan may qualify a Veteran for a presumption of service connection under this provision.

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 to determine if a presumption will potentially apply. Medical examinations are generally required where VA identifies these disability patterns to determine whether there is a medical explanation of the disabilities.

Should VA determine that a Gulf War Veteran does not have a presumptive disease/disability, he or she may establish direct service connection by showing the three elements described below.

Overview of Presumptive Service Connection

Direct service connection requires three elements: (1) evidence of a current disability; (2) an injury, disease, or event during active duty military service; and (3) medical or, in certain cases, lay evidence establishing a link or nexus between the two. A presumption relieves Veterans of the burden of producing evidence that directly establishes at least one of the elements they need to substantiate their claims. A presumption regarding exposure may establish the occurrence of an event in the military based on service in specific locations. The law may also presume a medical nexus or relationship of a disease to a presumed exposure.

A presumption, whether based on location of service or medical relationship, provides a legal basis for establishing service connection for disabilities where a factual basis may not exist in the Veteran's individual service and/or medical record.

For example, presumptions regarding location of service provide a legal basis for establishing an in-service event, such as a toxic exposure, where factual documentation of the actual exposure event does not exist. Under the provisions of section 1118 of title 38, United States Code, and section 3.317 of title 38, Code of Federal Regulations, VA presumes any Veteran who served in Southwest Asia since August 2, 1990, and who develops a disease associated with certain environmental hazards was exposed to those environmental hazards in service (in the absence of conclusive evidence otherwise).

VA may also establish presumptions for the purpose of establishing relationships between certain events in service and certain diseases and conditions, even where specific factual documentation may not exist. For example, 38 C.F.R. § 3.317 establishes malaria as a presumptive condition for Veterans who served in the Gulf War. In the absence of affirmative evidence of a cause outside of military service, including willful misconduct, VA presumes a Veteran's malaria resulted from this military service and provides compensation for that disability if it manifests to a compensable level of severity within a certain time.

Authority

The Secretary of Veterans Affairs has broad authority under section 501 of title 38, United States Code, to establish presumptions. To determine which diseases are associated with such service, the Secretary takes into account reports from the National Academy of Sciences (NAS) and all other sound medical and scientific information available. If the Secretary determines a presumption of service connection is warranted, he may issue proposed regulations setting forth his determination. VA issues a proposed regulation for public notice and comment outlining the presumption to be established. In proposing the regulation, VA outlines the scientific and/or medical basis for the presumption as well as the eligibility criteria for the presumption. VA then drafts a final regulation taking into account the public comments it received.

Scientific Bases

Public Law 105-368 charges the Secretary of Veterans Affairs with the responsibility for notifying Congress of findings of NAS that might impact presumptions of service connection for diseases associated with service in the Southwest Asia theater of operations during the Gulf War due to exposure to biological, chemical, or other toxic agents, environmental or wartime hazards, or preventive medicine or vaccines.

In preparing its reports for Gulf War health issues, NAS committees conduct comprehensive searches of all medical and scientific studies on the health effects of the environmental exposure being reviewed. In the course of this literature search and review, it is not uncommon for these committees to cover thousands of abstracts of

scientific and medical articles, eventually narrowing their review to the hundreds of the most relevant and informative peer-reviewed journal articles. NAS then scores the strength of the total medical and scientific evidence available by utilizing broad categories of association such as "inadequate or insufficient evidence of an association," "limited or suggestive evidence of an association," or "sufficient evidence of an association." NAS does not directly recommend new presumptions.

Upon receipt of the finished NAS reports, VA establishes work groups comprised of experts in medicine, disability compensation, health care, occupational and environmental health, toxicology, epidemiology, and law. These work groups, along with senior VA leaders, review in detail the NAS reports and all available scientific and medical information before recommending to the Secretary any presumptions. These recommendations to the Secretary are based in the strength and preponderance of the medical and scientific evidence.

Closing Remarks

VA continues to improve the efficient, timely, and accurate processing of claims involving service in the Gulf War. Presumptive service connection fills a critical gap when exposure to toxic substances or certain disabilities resulting therefrom are not specifically documented in a Gulf War Veteran's service records. Although the science and medical aspects of undiagnosed illnesses and multi-symptom illnesses are not yet fully understood, 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 testimony. I am pleased to address any questions you or other Members of the Committee may have.

Prepared Statement of Zachary Hearn

MARCH 15, 2016

In the summer of 2014, long held suspicions of The American Legion were confirmed by figures indicating an alarming trend in denial of Gulf War Illness related claims at the Department of Veterans Affairs (VA) - about 80 percent of those claims, 4 out of 5 veterans filing for service connection for the unexplained aftereffects of their service overseas in the Persian Gulf, were being denied service connection.¹ This figure stands out, because it is out of step with the overall denial rates for veterans overall in the VA system. Why is the system letting down these veterans, who answered the call and served, defeating an aggressor and liberating a nation within 100 hours of the use of ground forces?

The reasons are as varied as the symptoms faced by the veterans who suffer from Gulf War Illness. Medical professionals are unsure how to address undiagnosed illness, some Veterans Benefits Administration (VBA) employees may not understand the rules regarding the treatment of such claims in the VA disability benefits process, and the massive reliance on National Guard and Reserve component service members to fight and win the Gulf War still contributes to problems with transmittal of military records to VA. These are challenges that must be met and overcome, with the same aggression and determination shown by the men and women who fought and served halfway around the world from their homes a quarter century ago.

Chairmen Coffman, Abraham, Ranking Members Kuster, Titus, and distinguished members of the Subcommittees on Oversight and Investigations (O&I) and Disability and Memorial Affairs (DAMA), on behalf of National Commander Dale Barnett 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; we thank you for the opportunity to testify regarding The American Legion's position on "Twenty Five Years After the Persian Gulf War: An Assessment of VA's Disability Claim Process with Respect War Illness".Background

The American Legion has long been at the forefront of advocacy for veterans exposed to environmental hazards. Whether the hazard is Agent Orange, radiation, chemicals used during Project Shipboard Hazard and Defense, Gulf War Illness or conditions related to burn-pit exposure in Iraq and Afghanistan, The American Legion's position has been to:

¹"VA denies 4 in 5 Gulf War illness claims, new data show," - Patricia Kime, Military Times (June 5, 2014)

- Treat the affected veterans.
- Study effects to improve treatment and protect future generations.
- Fully fund research and publicly disclose all instances of contact so affected veterans can seek treatment.

VA currently identifies dozens of medical conditions that are presumptively related to Gulf War service. Assigning medical 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 the era of atomic weapons and 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 returned from Persian Gulf service to face serious health concerns following their deployments. However, a generation removed from Operation Desert Storm, and the medical community still is uncertain of how to properly diagnose or treat these veterans.

According to a February 2011 report published by the Department of Veterans Affairs (VA), over 1.12 million servicemembers deployed to the Persian Gulf between August 2, 1990 and September 10, 2001²; over 17 percent of those serving during these 11 years experienced a deployment to the Persian Gulf. A 2013 RAND Corporation report indicates 74 percent of the Army's active components had been deployed to either Iraq or Afghanistan through 2011³.

It is easy to get blinded by statistics associated with veterans suffering from conditions associated with their service in the Persian Gulf. However, as the nation's largest veterans' service organization, The American Legion, we regularly hear the painful stories of veterans negatively impacted by clusters of symptoms that is believed to have manifested due to their Persian Gulf service.

One veteran contacted The American Legion and discussed how he entered the United States Marine Corps as a "poster recruit". He was healthy, physically and mentally sharp. Upon returning from his deployment to the Persian Gulf in support of Operation Desert Storm, he began suffering weakness and malaise. No longer was he able to withstand standing in formation, and a once easy three-mile run became an impossible task. Headaches and gastrointestinal issues manifested. Sadly, the veteran's rapidly declining health limited his academic pursuits. Throughout this process, VA medical professionals failed to properly treat this veteran, suggesting he was malingering.

This is not the way veterans should be treated by the disability claims process.

Problems With Gulf War Claims

The American Legion has over 3,000 accredited representatives located throughout the nation. Through their dedicated efforts, The American Legion was able to represent over 775,000 veterans in Fiscal Year 2015. During our bi-annual training conducted in February 2016, over 130 accredited representatives were asked to discuss issues facing Gulf War veterans when seeking benefits. The problems highlighted by the experienced service officers could be grouped into three main clusters:

- Problems with diagnoses
- Problems with medical records for Guard and Reserve service members
- Problems in the VA system

Diagnoses:

By far the largest complicating factor for Gulf War Illness is that in dealing with "undiagnosed illness" medical professionals and claims adjudicators are operating outside the normal parameters they are used to working with. American Legion service officers note that it is quite common for medical professionals to hesitate to connect conditions to Persian Gulf service because they cannot identify a clear condition. Other obstacles include attributing symptoms to aging, suggesting the veteran is malingering as the veterans is "too young to be experiencing these symp-

²Gulf War Era Veterans Report: Pre-9/11(August 2, 1990 to September 10, 2001)

³<http://www.rand.org/content/dam/rand/pubs/research—reports/RR100/RR145/RAND—RR145.pdf>

toms," or to send the veteran for multiple tests to different doctors, only to receive many different diagnoses, further confusing the veteran's medical file.

Medical professionals, doctors and examiners, by their nature are used to providing clear, defined diagnoses. Gulf War Illness defies this trend and creates as much confusion for the doctors as it does for the veteran who is experiencing the symptoms. Due to the complexity of Gulf War Illness, a veteran's diagnosis may have changed multiple times during the course of their claim. VA raters are not medical specialists; often, they are unaware that the rapidly changing diagnoses are all essentially descriptions of the same condition. Moreover, the situation is further complicated by the fact that a medical professional rendered a diagnosis; once a diagnosis is provided, by definition, it is no longer an undiagnosed illness and therefore not subject to the regulations created to help Gulf War veterans obtain service connection.

One solution to this problem could be better usage of VA's disability benefits questionnaires (DBQs). DBQs are a standardized form utilized by medical providers to evaluate the level of disabilities suffered by veterans; both VA and private sector medical professionals have the ability to access the forms.

Because many veterans are denied compensation benefits related to 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 provide an extraordinary hardship to veterans and their family members; meanwhile, their health continues to deteriorate. If VA would 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 diagnosis, it provides the necessary outlet to medical providers, VA, and most importantly, our veterans, to finally receive their VA disability compensation. Through this, examiners and VA would have the necessary latitude to provide benefits.

Guard and Reserve Medical Records:

The American Legion has spoken at length about concerns with the implementation of the Virtual Lifetime Electronic Record (VLER) for veterans. While there is some progress on the VA side, there are still issues with obtaining Department of Defense (DOD) records. Even whatever meager progress the DOD has made does not begin to address the serious problems tracking down records for Guard and Reserve component service members. Veterans' claims for environmental exposures require proof of duty station, yet this is absent from medical records, and must be included in a veteran's file for the record to be considered complete for benefits. Veterans' claims for disability rely on the ability to prove events or symptoms manifested during a veteran's period of service. This becomes impossible in the absence of records.

The Persian Gulf War, beginning with Desert Shield and Desert Storm, represented a massive reliance on Guard and Reserve component service members. Unlike Vietnam, which saw little use of this portion of the force structure, the post Reagan drawdown of forces placed the military in a position where proper troop strength was not achievable utilizing solely the active duty components. The men and women of the National Guard and Reserve answered the call and have been doing so as a major and critical component of United State military strength ever since, right through the Global War on Terror. The quality and character of the service of these components has been excellent in the field.

However, reliance on these reserve elements has led to problems obtaining military records. Each National Guard component relies not only on federal combined records maintained by DOD, but also state record keeping which can vary from state to state. Service members who deploy as part of an activated National Guard unit may find portions of their records in DOD files in St. Louis, portions in their state archives, portions in field hospitals in Kuwait, Iraq, or elsewhere overseas, and portions in the military posts such as Fort Bragg, Fort Dix, or Fort McCoy where the parent unit mobilized for deployment. Often there is little to connect these distributed files.

Both the veteran and the claims adjudicator may not know that the critical information to prove the claims exists in one of these distributed files because they have some government records, so there is no reason to believe they don't have all the relevant information. In this way a veteran's file may be incomplete and there is not always an easy way to discover that fact.

The way this must be fixed is to ensure better consolidation of records. There has to be a better way to ensure all players - VA, DOD, Guard and Reserve units, forward hospitals in the field - communicate freely and continuously update a veteran's file to ensure a complete record. Without a complete record, veterans have little chance of a successful claim.

Systemic Problems:

Some of the systemic problems have already been addressed. VA employees who don't know to look for clusters of symptoms diagnosed several different ways within a veteran's file would never be able to see the pattern necessary to establish service connection. Other systemic problems involve improving outreach and understanding for veterans.

Some of the problems involve perception amongst veterans. There is a belief among many Gulf War veterans, communicated to service officers, that "VA is more interested in helping the Vietnam veterans and the current crop of veterans than those of us who fought the first Gulf War." While this is unlikely to be an accurate representation of the policy of VA, the fact that the perception is out there amongst veterans means there is work to be done. This is not uncommon or unprecedented. As a wartime service organization that has served members of all wars since our inception following the conclusion of World War I, The American Legion has seen some of this same perception among Korean War veterans, who feel lost between World War II and Vietnam. This is not the first "forgotten war." Better outreach and education can help these veterans.

Other veterans struggle with their claims just from dealing with the sheer weight of fighting such a long battle. For nearly a quarter century they have been passed from one doctor to another repeated told it was all in their head, repeatedly given conflicting diagnoses, repeatedly given more questions than answers. The whole time they are kept locked out of VA treatment because they cannot obtain service connection. This lack of access to benefits can provide an extraordinary hardship to veterans and their family members; meanwhile, their health continues to deteriorate.

It is a long, very difficult road for Gulf War veterans, and the lack of answers and widespread confusion related to their suffering makes it all the more difficult. The American Legion appreciates the level of difficulty associated with claims pertaining to Persian Gulf service; however, veterans have now suffered up to 25 years. VA's continuous reliance upon the medical community to discover the etiology and defined conditions have cost many veterans years of disability compensation. We call upon a liberalization of the manner Gulf War claims are adjudicated and provide an opportunity for our Gulf War veterans to finally receive the benefits they have earned their honorable service.⁴

Conclusion:

There have to be better answers for the men and women who served and continue to serve in the Persian Gulf region. There are some solutions that can and should see immediate implementation - improvements to VLER to include Guard and Reserve records, improvements to the DBQs to better educate medical professionals on how to evaluate veterans for undiagnosed illnesses, better training for VA employees to recognize the hidden patterns of Gulf War diagnoses in claims. Other solutions, such as improved outreach and better inclusion of the service members from the first Gulf War era will require more thoughtful responses and plans from VA. As with all plans to address concerns, they will be best formulated when they include all the stakeholders - VA, Congress and importantly the veterans themselves through the Veterans Service Organizations. Through this partnership we can find solutions to help address this dreadful denial rate for the men and women who have suffered without answers for far too long.

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 Warren J. Goldstein, Assistant Director in The American Legion Legislative Division (202) 861-2700.

Prepared Statement of Aleksandr Morosky

March 15, 2016

Chairmen Coffman and Abraham, Ranking Members Kuster and Titus and members of the Subcommittees, on behalf of the men and women of the Veterans of Foreign Wars of the United States (VFW) and our Auxiliaries, I would like to thank you for the opportunity to testify on VA's disability claims process with respect to Gulf War Illness.

⁴Resolution No. 127: GULF WAR ILLNESS - AUG 2014, Charlotte, NC

Today's hearing is extraordinarily timely, as this year our nation recognizes the 25th anniversary of the Persian Gulf War. While symbolic recognition is important, the VFW strongly believes that the most meaningful way to honor the service of Persian Gulf veterans is to ensure that they have access to the benefits they need and deserve. All too often, however, this does not happen. This is largely due to the fact that the signature condition associated with the Persian Gulf War, commonly known as Gulf War Illness, presents itself in a way that is not conducive to the traditional VA disability claims process. Consequently, our VFW service officers and appeals staff report that VA denies disability compensation claims for conditions associated with Gulf War service at a consistently higher rate than other types of claims.

Part of the challenge is that Gulf War Illness is an inherently difficult condition to diagnose and treat. This is because it presents itself as a host of possible symptoms common to many veterans that served in the Persian Gulf region, rather than a single condition that is clearly identifiable and unmistakable. What is certain is that more than 200,000 Persian Gulf War veterans suffer from symptoms that cannot be explained by medical or psychiatric diagnoses, such as chronic widespread pain, cognitive difficulties, unexplained fatigue, and gastrointestinal problems, to name a few. Since these conditions also exist in the general public, Persian Gulf veterans often have a difficult time proving the nexus between their conditions and their service necessary for VA to establish service connection.

Instead of Gulf War Illness, VA uses the term "medically unexplained chronic multisymptom illness" (MUCMI) to describe those symptoms. Although MUCMI is considered a presumptive condition for Persian Gulf veterans, there are certain factors that prevent many veterans from receiving favorable decisions when claiming that condition. MUCMI claims prove to be problematic for a number of reasons. When claiming MUCMI, the veteran lists the symptoms he or she is experiencing. These symptoms are often seemingly unrelated to one another, affecting multiple different body systems. As a result, VA assigns separate disability benefits questionnaires (DBQ) for each symptom, and separate exams are scheduled. The current Gulf War DBQ asks the physician whether there is a condition of each body system present, and then asks them to complete the relevant DBQs. Only after that are MUCMI questions asked.

We find that this practice of assigning separate DBQs for each symptom being claimed in connection with MUCMI has the effect of promoting diagnoses, even when those diagnoses are minimally supported. Once a symptom receives a diagnosis, it is no longer considered connected with MUCMI, which requires that the illness be undiagnosed. Since MUCMI is ruled out for that condition, the veteran no longer has the opportunity to be granted on a presumptive basis. Often lacking any evidence of the condition in the service treatment record, a nexus cannot be established, and the claim is denied.

VFW staff at the Board of Veterans Appeals notes that remands become numerous in these cases, and veterans often receive several different diagnoses for the same symptoms from different doctors. They believe that this is due to the minimal support for those diagnoses in the first place. It is apparent to them that VA seems to go to great lengths to find diagnoses for each symptom, simply so MUCMI can be ruled out.

The practice of parsing out symptoms has the additional effect of preventing a holistic evaluation for MUCMI. When the claim is for an undiagnosed illness, the physician should be asked more questions about the cluster of symptoms, which could be one illness leading to symptoms in multiple body systems, rather than separate conditions related to each symptom. Only if there are confirmed diagnoses should separate DBQs be completed. To improve the current system, the Gulf War DBQ should be analyzed by a team of physicians including those from War Related Illness and Injury Study Center. Additionally, VA should grant veterans reasonable doubt when deciding whether or not a veteran's symptoms should be considered MUCMI.

Another common problem anecdotally reported by VFW service officers is inconsistency in the way Gulf War claims are decided from one Regional Office to the next. To correct this, we suggest that VA should be required to provide current statistics on how many veterans are service connected for undiagnosed illnesses, and for Gulf War Presumptive Conditions, broken down by Regional Office of adjudication to analyze consistency. There are specific diagnostic codes used for these, so the numbers should be easy to obtain. Statistics should be compared to other toxic exposures claims that are decided at a centralized location versus those that are decentralized. A good example would be Agent Orange claims (decentralized) and Agent Orange C-123 claims (centralized). Future decisions about distributing work in the National Work Queue could be informed by this analysis.

VFW service officers report that there are two types of Gulf War claims that are consistently granted at a normal rate. The first are claims for presumptive conditions other than MUCMI. These include certain infectious diseases and amyotrophic lateral sclerosis (ALS). Since these conditions are relatively easy to identify, veterans with those diagnoses need only prove that they served in the Persian Gulf theater in order to receive favorable ratings. Unlike with MUCMI, a clear diagnosis of a known condition benefits their claims.

The second category that is regularly granted is benefits delivery at discharge (BDD) claims. Since BDD examinations are conducted prior to separation, any diagnoses are necessarily linked to service and service connection may be granted on a direct basis. Because of this, however, conditions that are presumptively related to Persian Gulf service are not indicated by VA as being presumptive. VFW BDD service officers report that VA decisions sometimes say that the condition is not presumptive, simply because the veteran did not have a Gulf War Registry exam.

While direct service connection often produces more favorable results, the VFW believes that these claims should be tracked as being associated with service in Southwest Asia, to form a more comprehensive database of which medical conditions are related to deployments to those locations. In addition, separating service members should be offered Gulf War Registry exams, if they have deployed to Southwest Asia at any point in their careers. These could be provided at DOD facilities as part of the separation physical. Once the fully integrated health record is implemented, VA would easily be able to see which conditions should be considered presumptive for tracking purposes.

More troublingly, VFW service officers report that, on at least two occasions, veterans were contacted by VA staff encouraging them to drop their BDD claims for MUCMI. It was explained that those exams could not be completed by QTC contract physicians, and it would take longer to process their claims. Instead, they were advised to refile these claims after separation so that a VA physician could perform the exam, and they would receive the same effective date, so long as they did so within the first year of separation from service. While the VFW cannot speculate on why BDD contract examiners are forbidden from conducting MUCMI exams, we believe that asking the veteran to refile separately is not only overly burdensome, but also undermines the entire purpose of the BDD system. For this reason, we believe that the Gulf War DBQ and proper training on how to complete those exams should be provided to all examiners VA utilizes, including contract physicians and those located abroad.

Finally, we note that VA recently updated the M21-1 adjudication procedures manual section on Gulf War Illness. With that in mind, we ask that Congress exercise oversight to ensure VA continuously provides proper training on Gulf War Illness to all those involved in adjudicating these claims.

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

Information Required by Rule XI2(g)(4) of the House of Representatives

Pursuant to Rule XI2(g)(4) of the House of Representatives, the VFW has not received any federal grants in Fiscal Year 2016, nor has it received any federal grants in the two previous Fiscal Years.

The VFW has not received payments or contracts from any foreign governments in the current year or preceding two calendar years.

Prepared Statement of Richard Weidman

March 15, 2016

Good afternoon Mr. Chairman, Ranking Member Kuster, and distinguished Members on the Subcommittee on Oversight & Investigation, House Committee on Veterans Affairs. On behalf of VVA National President John Rowan and all of our officers and members, we thank you for the opportunity for Vietnam Veterans of America (VVA) to appear here today to share our views on the adjudication of Compensation claims of Persian Gulf War Veterans by the Department of Veterans Affairs. I ask that you enter our full statement in the record, and I will briefly summarize the most important points of our statement.

No doubt you are each asking yourselves the obvious question: "Since Vietnam Veterans of America (VVA) is a single generation organization, what are you doing here? Did you get lost and wander in here?" The answer to this question is several-fold.

First, the Founding principle of VVA is "Never again shall one generation of American veterans abandon another." We take that principle as words to live by, both individually and as an organization. The buttons you see me and some others wearing this morning, "Leave no veteran behind" is merely a shortened version of that founding principle that will fit on a button.

Second, the parallels of what the Persian Gulf War veterans have been going through in regard to Gulf War Illness is all too familiar to those of us who have had similar experiences with the VA and with DOD in regard to Agent Orange, Agent Blue, Agent White, Agent Pink, SHAD or Shipboard Hazards and Decontamination, Project 112 in all of its multiple machinations, all of it presided over by Dr. J. Clifton Spendlove, located in the arid high country at Deseret, Utah. Trying to winnow out the baloney thrown out by both the Department of Defense and VA to try and prevent us from making any progress was (and still is) just shameful.

The DOD kept (and still keeps to this day) much of the material that documented what toxins in what quantities American service members had been exposed to in the period that went at least from 1962 through 1973 classified as Secret or Top Secret. This was not done to protect the nation (al Qaeda, ISIS, and other assorted bad guys already had this information because our military gave it to the Iraqis in their war against Iran, and from there became available to the world wide networks of terrorists of various flavors).

No, this material is being kept classified to keep it from the American public and from the patriotic service members injured by one or another of a number of toxic substances. This is being done so that DOD can shirk their responsibility, as well as to avoid any liability or culpability.

It is worth noting, by the way, that the herbicide program was by 1962 part of Project 112. There were two principle purposes to the herbicide program, which were crop destruction and defoliation to deny the enemy cover. In late 1969 Kissinger had the herbicide program removed from Project 112, which was for all chemical and biological weapons programs. Kissinger did not want to go to the upcoming sessions to re-negotiate the Geneva Accords on the Rules of Warfare with the herbicides under the command of the Chemical & Biological command of the US Army.

That was when the "D" in SHAD was changed from 'decontamination' to "defense" so that they could claim that this was all to test defenses, and not to test offensive weapons. Similarly, there was a concerted effort from that point on to only stress herbicides was to deny the enemy cover, inasmuch as destruction of the civilian food supply was specifically outlawed under the Geneva Accords. (The North Vietnamese Army (NVA) and the Viet Cong or National Liberation Front (NLF) taxed the farmers in areas they controlled for a percentage of their civilian food supply crops in order to feed their troops.)

That level of lying by DOD went on for the next 45 years, up to this day, and we still see no sign that the lies are going to stop until both DOD and VA clean out the rat's nest of the arrogant spinners of mendacity from both the key sections of VA, (both VHA and VBA), and from DOD.

The DOD/VA "Management of Chronic Multi-symptom Illness" is a real study in how to cloak claims that there are no physical cause(s) of Gulf War Illness, but rather symptoms that cannot be tracked to any exposures in the Gulf. In fact, however, there is clear evidence that multitudes of troops were exposed to a variety of toxins. All of that is disregarded in this little bit of clever doublespeak.

All that is missing from this so-called "clinical practice guideline" is the snake oil to wash down this pseudo-prescriptive pabulum of puerile prognostications masquerading as a serious clinical guide.

The fact is that VA has never really tried to do serious research work into the causes of Gulf War Illness. It is all too reminiscent of the lack of serious research into the long term adverse effects of the herbicides used in Vietnam or of the organic phosphates pesticides used in the Vietnam War and in the Persian Gulf War, as well as in the Iraq and Afghanistan wars that continue to this day.

Given the fact that there are VBA policy people who think that a hack who has never published any article in a reputable peer reviewed scientific journal is the pre-eminent scientific expert on Agent Orange and other herbicides in the whole world, it should surprise no one that VA continues to drag its feet on the epidemiological studies that IOM and others have strongly recommended for year, or that there is almost no real work into looking at toxicological research looking seriously into the various toxins that our troops were exposed to during Vietnam.

The same dearth of serious scientific effort is now being perpetuated against Persian Gulf War veterans, as well as the troops who served in the current wars.

It is no wonder that 80% of all Gulf War illness claims are denied, given the science denier motif of some of the key permanent staff members in VBA. At VVA we were astonished at the sham of ensuring that in the latest IOM review of Gulf

War Illness, that half of the panel, including the Chairwoman, were mental health clinicians. Is it any wonder that this bunch recommended abandoning any "hard" science investigations into the cause(s) of Gulf War Illness? The mental health clinicians on that panel may all be very good mental health clinicians, but it is the manipulation of the process by the VA that is maddening.

If you set out to make sure that you find nothing, and you structure the process to find no physical cause, and you work assiduously toward ensuring you find nothing, then it should be no surprise that you indeed find nothing. That would sum up the latest IOM panel on Gulf War Illness, which has the effect of setting science on its head.

As you know, Mr. Chairman, VVA has worked very hard with Chairman Benishek and with Chairman Miller on the Toxic Exposures Research Act of 2016 which we need to enact as soon as possible this year. It will force VA to do the research it should have been doing right along regarding toxic exposures and toxic wounds. Secretary McDonald has said that he does not need any additional authority to do what HR 1769 directs him to do. That is technically true, but VA has done nothing in the way of funding serious research regarding the ionizing radiation that so dramatically affected the health of so many in the World War II generation, and those who came right behind them.

Nor has the VA funded serious research into the adverse health impact of Agent Orange and other toxins used in Vietnam. Virtually all of the useful studies utilized in the biennial reviews were from the countries of the Pacific Rim such as Japan, Taiwan, New Zealand, Australia, or from Europe.

Similarly, VA has not funded any serious work on the toxins that have affected Persian Gulf War Veterans, nor research into the toxins that affect Iraq and Afghanistan veterans. In fact, I cannot recall any useful research into toxic exposures by VA that the Congress did not specifically mandate the VA to do, and then follow up with assiduous oversight. I would point out, Mr. Chairman that I have been at this for a day or two, so that observation covers a bit of a time span.

It is not only time to pass the Toxic Exposures Act, but to utilize any and all means that will force the VA to stop wasting money and time, and get on with the business of ensuring veterans get the assistance they need, when it will still do some good.

Thank you, Chairman Coffman and Ranking Member Kuster, for this opportunity to share some of these observations of Vietnam Veterans of America with you and your distinguished colleagues. I will be pleased to answer any questions.

VIETNAM VETERANS OF AMERICA

Funding Statement

March 15, 2016

The national organization Vietnam Veterans of America (VVA) is a non-profit veteran's membership organization registered as a 501(c) (19) with the Internal Revenue Service. VVA is also appropriately registered with the Secretary of the Senate and the Clerk of the Senate of Representatives in compliance with the Lobbying Disclosure Act of 1995.

VVA is not currently in receipt of any federal grant or contract, other than the routine allocation of office space and associated resources in VA Regional Offices for outreach and direct services through its Veterans Benefits Program (Service Representatives). This is also true of the previous two fiscal years.

For Further Information, Contact:

Executive Director for Policy and Government Affairs
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(301) 585-4000, extension 127

Richard F. Weidman

Richard F. "Rick" Weidman is Executive Director for Policy and Government Affairs on the National Staff of Vietnam Veterans of America. As such, he is the primary spokesperson for VVA in Washington. He served as a 1-A-O Army Medical Corpsman during the Vietnam War, including service with Company C, 23rd Med, AMERICAL Division, located in I Corps of Vietnam in 1969.

Mr. Weidman was part of the staff of VVA from 1979 to 1987, serving variously as Membership Service Director, Agency Liaison, and Director of Government Relations. He left VVA to serve in the Administration of Governor Mario M. Cuomo as

statewide director of veterans' employment & training (State Veterans Programs Administrator) for the New York State Department of Labor.

He has served as Consultant on Legislative Affairs to the National Coalition for Homeless Veterans (NCHV), and served at various times on the VA Readjustment Advisory Committee, the Secretary of Labor's Advisory Committee on Veterans Employment & Training, the President's Committee on Employment of Persons with Disabilities - Subcommittee on Disabled Veterans, Advisory Committee on Veterans' Entrepreneurship at the Small Business Administration, and numerous other advocacy posts. He currently serves as Chairman of the Task Force for Veterans' Entrepreneurship, which has become the principal collective voice for veteran and disabled veteran small-business owners.

Mr. Weidman was an instructor and administrator at Johnson State College Vermont) in the 1970s, where he was also active in community and veterans affairs. He attended Colgate University (B.A., 1967), and did graduate study at the University of Vermont.

He is married and has four children.

Prepared Statement of Richard V. Spataro

Executive Summary

National Veterans Legal Services Program (NVLSP) has two main areas of concern with respect to the VA's disability claim process related to Gulf War Illness. First, the Department of Veterans Affairs (VA) repeatedly commits certain types of errors when adjudicating Persian Gulf War veterans' claims for disability compensation for chronic undiagnosed illnesses. Second, the VA should extend the end date of the period during which symptoms of a qualifying chronic disability must first manifest in order to qualify for presumptive service connection.

VA's Handling of Claims Related to Gulf War Illness. The VA frequently commits errors when adjudicating claims for disability compensation for a chronic disability resulting from an undiagnosed illness. The four most common types of errors NVLSP sees VA adjudicators commit are:

- 1) failing to consider the favorable rules for presumptive service connection for an undiagnosed illness under 38 U.S.C. § 1117(a)(2)(A) and 38 C.F.R. § 3.317(a)(2)(i)(A), when a Persian Gulf War veteran does not explicitly claim benefits for Gulf War Illness, but that theory of entitlement is reasonably raised by the evidence;
- 2) erroneously attributing a symptom that has not been medically linked to a diagnosed disability with a diagnosed disability unrelated to military service;
- 3) denying the claim due to the lack of medical nexus evidence, when medical nexus evidence is not required to establish entitlement to service connection under 38 U.S.C. § 1117 and 38 C.F.R. § 3.317; and
- 4) denying the claim due to the absence of "objective indications" of a chronic disability, without considering non-medical indicators capable of independent verification, which are sufficient to satisfy the "objective indications" requirement for establishing service connection under 38 U.S.C. § 1117 and 38 C.F.R. § 3.317.

Extension of the Date by Which an Undiagnosed Illness or Medically Unexplained Chronic Multi-Symptom Illness Must Manifest to a Disabling Degree of 10 percent. Under 38 U.S.C. § 1117(b), the Secretary of Veterans Affairs must establish the period during which a qualifying chronic disability must manifest to a disabling degree of at least 10 percent following service in the Southwest Asia theater of operations during the Persian Gulf War in order to qualify for presumptive service connection. After initially establishing a 2-year presumptive period, the VA has repeatedly extended the end date of the presumptive period, which is currently December 31, 2016. The scientific community is still uncertain about the cause of illnesses suffered by Persian Gulf War veterans and the time period during which symptoms of such illnesses might first manifest. NVLSP, therefore, believes that the VA should again extend the end date of the presumptive period during which symptoms of a qualifying chronic disability must first manifest, if not indefinitely, to at least December 31, 2021.

Messrs. Chairmen and Members of the Committees:

I am pleased to have the opportunity to submit this testimony on behalf of the National Veterans Legal Services Program (NVLSP). NVLSP is a nonprofit veterans

service organization founded in 1980 that has represented thousands of claimants before the Department of Veterans Affairs (VA), the United States Court of Appeals for Veterans Claims (CAVC), and other federal courts. NVLSP's efforts over the last 35 years have resulted in billions of dollars in VA disability and death benefits for veterans and their families.

NVLSP also recruits and trains volunteer attorneys, and trains service officers from such veterans service organizations as The American Legion, Military Order of the Purple Heart, and Vietnam Veterans of American. NVLSP has trained thousands of these veterans advocates in veterans law. NVLSP publishes numerous advocacy materials that thousands of veterans advocates regularly use as practice tools to assist them in their representation of VA claimants. On behalf of The American Legion, NVLSP conducts local outreach and quality reviews of VA regional office claims adjudications.

NVLSP is one of the four veterans service organizations that comprise the Veterans Consortium Pro Bono Program, which recruits and trains volunteer lawyers to represent veterans who have appealed a Board of Veterans' Appeals decision to the CAVC without a representative. NVLSP attorneys also mentor the Pro Bono Program's volunteer attorneys.

I. VA's Handling of Claims Related to Gulf War Illness

NVLSP has vast experience with veterans' claims for VA disability compensation under 38 U.S.C. § 1117, the statute that provides for presumptive service connection of qualifying chronic disabilities in Persian Gulf War veterans, and VA's associated regulation, 38 C.F.R. § 3.317. We have represented many veterans with such claims before the CAVC, the Board of Veterans' Appeals, and VA regional offices. We have mentored attorneys in their representation of veterans with such claims before the VA through our Lawyers Serving Warriors program. We have mentored attorneys representing veterans with such claims at the CAVC through the Veterans Consortium Pro Bono Program. Nearly all of our representation and mentoring has occurred after the VA denied the claim. Our work on these cases has revealed that the VA frequently commits errors when adjudicating Gulf War Illness claims.

38 U.S.C. § 1117 requires the VA to pay compensation on a presumptive basis to Persian Gulf War veterans for three types of chronic disabilities: (1) undiagnosed illnesses; (2) medically unexplained chronic multi-symptom illnesses, such as chronic fatigue syndrome, fibromyalgia, and irritable bowel syndrome; and (3) diagnosed illnesses that the Secretary of Veterans Affairs determines warrant a presumption of service connection, which presently consist of brucellosis, campylobacter jejuni, coxiella burnetii (Q fever), malaria, mycobacterium tuberculosis, nontyphoid salmonella, shigella, visceral leishmaniasis, and West Nile virus. See 38 C.F.R. § 3.317. NVLSP has seen relatively few problems with the VA's adjudication of claims for service connection of the second and third types of chronic disabilities—medically unexplained chronic multi-symptom illnesses and diagnosed disabilities that the Secretary has determined warrant a presumption of service connection. In our experience, however, the VA frequently commits errors when adjudicating claims for disability compensation for a chronic disability resulting from an undiagnosed illness.

As background, it is important to know the requirements a Persian Gulf War veteran must satisfy to establish service connection for a chronic disability resulting from an undiagnosed illness. As the CAVC explained in *Gutierrez v. Principi*, 19 Vet. App. 1, 7 (2004), a case in which the veteran was represented by NVLSP, in order to establish service connection for a chronic disability resulting from an undiagnosed illness under 38 U.S.C. § 1117 and 38 C.F.R. § 3.317, the veteran must present evidence that he or she:

- (1) exhibits objective indications;
- (2) of a chronic disability such as those listed in paragraph (b) of 38 C.F.R. § 3.317 [fatigue, signs and symptoms involving skin, headache, muscle pain, joint pain, neurologic signs or symptoms, neuropsychological signs or symptoms, signs or symptoms involving the respiratory system, sleep disturbances, gastrointestinal signs or symptoms, cardiovascular signs or symptoms, abnormal weight loss, and menstrual disorders];
- (3) which became manifest either during active military, naval, or air service in the Southwest Asia theater of operations during the Persian Gulf War, or to a degree of 10% or more not later than December 31, 2006 [later extended by the VA to December 31, 2016]; and
- (4) such symptomatology by history, physical examination, and laboratory tests cannot be attributed to any known clinical diagnosis.

It has been over two decades since § 1117 was added to Title 38 of the United States Code, yet VA adjudicators still have a difficult time adjudicating “undiagnosed illness” claims. Although not the only types of errors committed by the VA when adjudicating “undiagnosed illness” claims, in our experience, the following are the most common errors:

A. Failing to address the veteran’s entitlement to service connection for an undiagnosed illness

One of the most common errors we see is VA adjudicators failing to consider the favorable rules for presumptive service connection for an undiagnosed illness under 38 U.S.C. § 1117(a)(2)(A) and 38 C.F.R. § 3.317(a)(2)(i)(A), when a Persian Gulf War veteran does not explicitly claim benefits under that theory of service connection. This type of error typically occurs when the veteran claims entitlement to service connection for a particular diagnosis the veteran thinks he or she has (for example, “knee arthritis”), or more generally describes the anatomical area of the disability (for example, “a shoulder disability”), but does not refer to Gulf War Illness. In such cases, if the evidence ultimately shows that the veteran’s chronic complaints cannot be attributed to a known diagnosis, the VA adjudicator sometimes denies the veteran’s claim due to the lack of a diagnosed disability, which is a requirement for establishing service connection under all other theories of entitlement. Although VA adjudicators have an affirmative duty to consider all reasonably raised theories of service connection (see, e.g., *Robinson v. Mansfield*, 21 Vet. App. 545, 552 (2008), *aff’d sub nom. Robinson v. Shinseki*, 557 F.3d 1355 (Fed. Cir. 2009)), they often fail to consider service connection for an undiagnosed illness under 38 U.S.C. § 1117(a)(2)(A) and 38 C.F.R. § 3.317(a)(2)(i)(A), when that theory of entitlement is reasonably raised by the evidence.

Similarly, we sometimes see cases in which the VA fails to consider a Persian Gulf War veteran’s entitlement to service connection for an undiagnosed illness manifested by symptoms of chronic fatigue under 38 U.S.C. § 1117(a)(2)(A) and 38 C.F.R. § 3.317(a)(2)(i)(A), when the veteran claims entitlement to service connection for “chronic fatigue” or “chronic fatigue syndrome,” but is ultimately found not to meet the full diagnostic criteria for chronic fatigue syndrome. Persian Gulf War veterans are entitled to presumptive service connection for chronic fatigue syndrome as a medically unexplained chronic multi-symptom illness under 38 U.S.C. § 1117(a)(2)(B) and 38 C.F.R. § 3.317(a)(2)(i)(B). However, if the veteran suffers from symptoms of chronic fatigue that are not attributable to a diagnosed illness such as chronic fatigue syndrome, the veteran is likely entitled to service connection for an undiagnosed illness manifested by symptoms of chronic fatigue. We have seen multiple VA adjudicators deny a veteran’s claim solely on the basis that he or she is not diagnosed with chronic fatigue syndrome, without addressing the veteran’s entitlement to service connection for an undiagnosed illness manifested by the symptom of chronic fatigue.

B. Attributing symptoms that have not been associated with a diagnosed condition to a diagnosed condition.

VA adjudicators often erroneously attribute a symptom that has not been medically linked to a diagnosed disability with a diagnosed disability unrelated to military service. The VA then denies the claim on the basis that the veteran does not have an undiagnosed illness, because all of the veteran’s disability symptoms are associated with known diagnoses. We have seen several cases like this in which a careful review of the medical evidence shows that, contrary to the VA’s finding, not all of the symptoms identified by the veteran are linked to a specific diagnosis. In some cases, the medical evidence is equivocal regarding the cause of the symptom. In other cases, the medical evidence attributes some, but not all of the veteran’s symptoms to a diagnosed disability, and the VA adjudicator over-broadly interprets the medical evidence as showing that all of the veteran’s symptoms are attributable to the diagnosis, even those not specifically listed by the medical expert. In one of our cases, the VA denied the veteran’s claim for an undiagnosed liver disability on the basis that he was diagnosed with hepatitis C. The only medical record that provided the hepatitis diagnosis, however, was for a different person and had been erroneously associated with the veteran’s claims file. There are many possible reasons why VA adjudicators commit this type of error, but the most likely is simple lack of attention to detail.

C. Denying the claim due to the absence of medical nexus evidence or the presence of negative nexus evidence

Under 38 U.S.C. § 1117 and 38 C.F.R. § 3.317, a Persian Gulf War veteran is entitled to the presumption of service connection for a chronic undiagnosed illness if cer-

tain requirements are met. In 2004, the CAVC emphasized that medical evidence specifically linking the disability to military service or the Persian Gulf War is not one of those requirements. See *Gutierrez v. Principi*, 19 Vet. App. 1, 19 (2004). Rather, as noted above, service connection is warranted if the veteran: (1) exhibits objective indications; (2) of a chronic disability such as fatigue, headache, muscle pain, joint pain, etc.; (3) which became manifest either during active military, naval, or air service in the Southwest Asia theater of operations during the Persian Gulf War, or to a degree of 10% or more not later than December 31, 2016; and (4) such symptomatology by history, physical examination, and laboratory tests cannot be attributed to any known clinical diagnosis. See *Gutierrez*, 19 Vet. App. at 7.

The VA, however, continues to deny some claims for service connection for undiagnosed illnesses under 38 U.S.C. § 1117 and 38 C.F.R. § 3.317, due to the erroneous imposition of a medical nexus requirement. We have seen VA decisions stating that symptoms for which a medical explanation has not been found must be linked by a medical expert to an undiagnosed illness. We have seen claims denied because the veteran did not present medical evidence of a relationship between his symptoms and an undiagnosed illness or service in Southwest Asia. We have seen decisions in which the VA denied the claim because a medical expert expressed an opinion that the symptoms were less likely than not related to the veteran's Persian Gulf War service, without offering a diagnosis or alternative etiology for the symptoms. All of these denials were erroneous, because medical nexus evidence is not required to establish entitlement to service connection under 38 U.S.C. § 1117 and 38 C.F.R. § 3.317.

D. Denying the claim due to the absence of "objective indications" of a chronic disability, without considering non-medical indicators capable of independent verification.

As noted above, in order to establish entitlement to service connection for an undiagnosed illness, the veteran must exhibit "objective indications" of a chronic disability. "Objective indications" include "both 'signs,' in the medical sense of objective evidence perceptible to an examining physician, and other, non-medical indicators that are capable of independent verification." 38 C.F.R. § 3.317(a)(3) (emphasis added). We have identified multiple cases in which the VA erroneously denied the veteran's claim for entitlement to service connection for an undiagnosed illness on the basis that the veteran did not exhibit "objective indications" of a chronic disability, solely due to the lack of objective evidence perceptible to a VA physician at a Compensation and Pension examination, without considering other, non-medical indicators that are capable of independent verification. In these cases, the VA adjudicators relied on the findings in the VA Compensation and Pension examination report. The adjudicators, however, ignored corroborating lay statements about the veteran's observable symptoms, such as joint swelling, twitching, and complaints of pain; and ignored records showing that the veteran sought medical treatment for the symptoms. Such lay statements and medical treatment records are "indicators that are capable of independent verification" sufficient to satisfy the "objective indications" requirement for establishing service connection under 38 U.S.C. § 1117 and 38 C.F.R. § 3.317.

II. Extension of the Date by Which an Undiagnosed Illness or Medically Unexplained Chronic Multi-Symptom Illness Must Manifest to a Disabling Degree of 10 percent.

In 38 U.S.C. § 1117(b), Congress directed the Secretary of Veterans Affairs to prescribe by regulation the period of time following service in the Southwest Asia theater of operations during the Persian Gulf War that the Secretary determines is appropriate for the presumption of service connection for qualifying chronic disabilities. The Secretary initially established a 2-year post-Persian Gulf War service period during which symptoms of an undiagnosed illness needed to manifest to a degree of 10 percent in order to qualify for presumptive service connection. See *Compensation for Certain Undiagnosed Illnesses*, 60 Fed. Reg. 6660 (Feb. 3, 1995). In 1997, the Secretary updated 38 C.F.R. § 3.317 to require manifestation of the symptoms no later than December 31, 2001. See *Compensation for Certain Undiagnosed Illnesses*, 62 Fed. Reg. 21,138 (Apr. 29, 1997) (Interim Final Rule). In 2001, the VA extended the end date of the presumptive period to December 31, 2006. *Extension of the Presumptive Period for Compensation for Gulf War Veterans' Undiagnosed Illnesses*, 66 Fed. Reg. 56614 (Nov. 9, 2001) (Interim Final Rule). In 2006, the VA extended the end date of the presumptive period to December 31, 2011. *Extension of the Presumptive Period for Compensation for Gulf War Veterans*, 71 Fed. Reg. 75669 (Dec. 18, 2006) (Interim Final Rule).

Most recently, in 2011, the VA extended the end date of the presumptive period to December 31, 2016. Extension of Statutory Period for Compensation for Certain Disabilities Due to Undiagnosed Illnesses and Medically Unexplained Chronic Multi-Symptom Illnesses, 76 Fed. Reg. 81,834 (Dec. 29, 2011) (Interim Final Rule). The VA noted that the scientific and medical literature available at that time suggested that "while the prevalence of chronic multi-symptom illness may decrease over time following deployment to the Gulf War, the prevalence remains significantly elevated among deployed veterans more than a decade after deployment. At present, there is not a sufficient basis to identify the point, if any, at which the increased risk of chronic multi-symptom illness may abate." Id. at 81835. The VA concluded that extension of the presumptive period was warranted because "scientific uncertainty remains as to the cause of illnesses suffered by Persian Gulf War veterans and the time period in which such veterans have an increased risk of chronic multi-symptom illness" as well as the fact that National Academy of Sciences reviews were ongoing. Id.

A review of the most recent report of the Institute of Medicine of the National Academies of Science, Engineering, and Medicine, Gulf War and Health, Volume 10, Update of Health Effects of Serving in the Gulf War, 2016 (prepublication copy), reveals that little has changed with respect to the level of scientific certainty regarding the cause of illnesses suffered by Persian Gulf War veterans and the time period during which symptoms of such illnesses might first manifest. Due to this continued state of uncertainty in the scientific community, NVLSP believes that the VA should again extend the end date of the presumptive period during which symptoms of a qualifying chronic disability must first manifest to a disabling degree of at least 10 percent. NVLSP believes that end date should be extended indefinitely, but at the very least to December 31, 2021.

I would be pleased to answer any questions you may have.

Thank you.

Statements For The Record

ANTHONY HARDIE

Thank you, Chairmen Coffman and Abraham, Ranking Members Kuster and Titus, and Members of the Committee for today's hearing and for this opportunity to present this information to you.

I'm Anthony Hardie, a 1991 Gulf War and Somalia veteran, and Director of Veterans for Common Sense. VCS and I have provided testimony on many previous occasions, most recently my testimony as a witness at your February 23, 2016 hearing on Gulf War veterans' health outcomes on the 25th anniversary of the 1991 Gulf War.

1998 PERSIAN GULF WAR VETERANS LEGISLATION

As I noted in my testimony of February 23, it took almost eight years after the war before Gulf War veterans' major legislative victory, with the enactment of the Persian Gulf War Veterans Act of 1998 (Title XVI, PL 105-277) and the Veterans Programs Enhancement Act of 1998 (PL 105-368, Title I-"Provisions Relating to Veterans of Persian Gulf War and Future Conflicts") - two landmark bills that set the framework for Gulf War veterans' healthcare, research, and disability benefits.

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.

The legislation included a long list of known Gulf War exposures. VA was to presume our exposure to all of these, and then, with the assistance of the National Academy of Sciences (NAS), evaluate each exposure for associated adverse health outcomes in humans and animals. In turn, the VA Secretary would consider the reports by the NAS's Institute of Medicine (IOM), "and all other sound medical and scientific information and analyses available," and make determinations granting presumptive conditions. There was a new guarantee of VA health care. There would also be a new national center for the study of war-related illnesses and post-deployment health issues, which would conduct and promote research regarding their etiologies, diagnosis, treatment, and prevention and promote the development of appropriate health policies, including monitoring, medical recordkeeping, risk communica-

tion, and use of new technologies. There was to be an effective methodology for treatment development and evaluation, a medical education curriculum, and outreach to Gulf War veterans. Research findings were to be thoroughly publicized. To ensure the federal government's proposed research studies, plans, and strategies stayed focused and on track, VA was to appoint a research advisory committee that included Gulf War veterans - presumably those who were ill and affected - and their representatives.

Instead, we learned that enactment of those laws was just another battle in our long war.

From the beginning, VA officials fought against implementing these laws, dragging their feet and upending their implementation.

In addition to the failures I noted in my February 23 testimony, the process for determining presumptions has failed to yield new presumptions without Congressional intervention. And, the laws aimed at providing a clear path for Gulf War veterans' compensation by VA while awaiting the development of effective treatments has been not just problematic, but with extraordinarily high denial rates, as VA's own data shows and as will be discussed below.

For Gulf War veterans, getting VA to approve a disability claim for a presumptive condition has been nearly impossible for most. And, as with all denied VA claims, the backlog of appealed claims is daunting and adds years to the process.

DESPITE REPEATED VA INTERVENTIONS, VA'S GULF WAR VETERAN CLAIMS DENIAL RATES ARE WORSENING OVER TIME

The rates of VA's denial of Gulf War veterans' presumptive claims - for "undiagnosed illness" and for the "chronic multisymptom illnesses" such as Fibromyalgia, Irritable Bowel Syndrome/Functional Gastrointestinal Disorders, and Chronic Fatigue Syndrome - have been getting worse over time.

This worsening has been despite repeated high-level interventions by VA - interventions made ostensibly to improve VA's review processes for Gulf War veteran's presumptive claims.

2007 VA Denial Rate of Gulf War Veterans' Presumptive Undiagnosed Illness Claims

In 2007 and 2008, I did a series of presentations about Gulf War veterans' severe challenges with VA research, healthcare and benefits. The presentations were made to a number of national and regional groups around the country and were entitled, "Lost in the Shuffle". Among the data presented was VA's abysmal claims failures for Gulf War claims:

Based on a May 2007 report from VA's Gulf War Information System (GWVIS), out of 696,842 Gulf War veterans, 280,623 had filed service-connected disability claims. Of those, 13,027 were "undiagnosed illness claims" (what VA terms "UDX" claims), just 3,384 had been approved - a 74 percent denial rate.

2010 VA Intervention

According to a February 4, 2010, "All VA Regional Offices Training Letter," (10-01), with the subject, "Adjudicating Claims Based on Service in the Gulf War and Southwest Asia,":

"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."

This letter preceded regulatory amendments and provided guidance to VA claims examiners to more appropriately adjudicate Gulf War veterans' claims.

2014 VA DENIAL RATE OF GULF WAR VETERANS' PRESUMPTIVE CLAIMS

Data provided by VA to the office of then-Congressman Kerry Bentivolio on March 28, 2014 showed a nearly 80% denial rate for what VA termed in the response, "a Gulf War-related illness". It appears that this is the cumulative VA denial rate of all presumptive undiagnosed illness and presumptive chronic multisymptom illness (Fibromyalgia, Irritable Bowel Syndrome; Chronic Fatigue Syndrome) claims by Gulf War veterans.

Key findings (2014)

- 80% Gulf War Illness Claims Denial Rate. Of 54,193 Gulf War-related illness claims filed with VA, four out of five - nearly 80 percent (80%) - were denied.

- 52% of the denied for something else. A full 52 percent of the denied Gulf War-related illness claims were approved by VA for something else, implying a VA bias against approving Gulf War Illness claims.
- 38% denied for everything. A full 38 percent (38%) of veterans' claims for Gulf War-related illness were had their claims denied entirely, both for Gulf War-related illness and other conditions.

By the Numbers (2014)

696,842 Veterans: The total number of veterans deployed to the Persian Gulf theatre of operations during the 1991 Gulf War.

54,193 GWI Claims: The number of Gulf War-related illness claims veterans have filed with VA, to March 2014. [VA notes this figure represents original claims for service-connection; it does not include reopened claims or claims for an increased disability rating.]

11,216 Approved: The number of Gulf War Illness claims that VA granted. [VA notes that due to data limitations, this figure does not include some Veterans who have been granted service connection on a direct basis (meaning that the disability became manifest during active service) rather than under the provisions of 38 C.F.R. § 3.317.]

42,977 Denied: The total number of Gulf War-related illness VA has denied.

20% Approved: The percentage of Gulf War-related illness that VA granted (11,216 approved out of 54,193 filed = 20.7%).

80% Denied: The percentage of Gulf War-related illness VA has denied (42,977 denied out of 54,193 filed = 79.3% denial rate).

22,470 Approved for Something Else: The number of veterans filing Gulf War-related illness claims that were denied but VA approved the veterans' claims for some other condition(s).

42% Denied for GWI but Approved for Something Else: The percent of veterans filing Gulf War-related illness claims that were denied but VA approved their claims for some other condition(s) (22,470 approved for something else out of 54,193 total Gulf War-related illness claims filed = 41.5%).

52% of the Denied were Approved for Something Else: The percent of denied Gulf War-related illness claims approved for some other condition. (22,470 approved for something else out of 42,977 denied Gulf War-related illness claims = 52.3%)

20,507 Denied for all Conditions: The number of veterans filing Gulf War-related illness claims that were denied for GWI and not receiving compensation for other conditions. (54,193 Gulf War-related illness claims filed minus 22,470 claims approved for something else = 20,507)

38% Denied for all conditions: The percent of all Gulf War-related illness claims filed that were denied for Gulf War-related illness and also not receiving compensation for other conditions (20,507 denied out of 54,193 = 37.8%)

67% Average Disability Rating: The average disability rating granted by VA for Gulf War-related illness claims filed.

VSO Response to 2014 Denial Rates

In a July 16, 2014 letter from two of the largest veterans service organizations (VSOs), AMVETS and VVA, to then-Acting VA Secretary Sloan Gibson highlighted the newly released VA claims denial information and provided insight into why this was being allowed within VA:

"VA acknowledges that 250,000 suffer from Gulf War illness. (The recent VA 'Gulf War Review,' for example, states that nearly 700,000 U.S. troops deployed to the 1991 war and that VA's major 2005 study showed that 37% of those (roughly 250,000) have chronic multisymptom illness, VA's term for Gulf War illness. The 2010 report of the Institute of Medicine also found 250,000 veterans were ill and that their illness was associated with Gulf War service.

"Yet, VA's own most recent statistics, provided in response to a Congressional inquiry this Spring, show that only 11,216 Gulf War-related illness claims have been granted and 80% of such claims are denied. (See VA report to Congressman Bentivolio, attached.) Even including all claims approved for other conditions, the total number of Gulf War veterans approved for care and benefits is only 36,000, out of the 250,000 afflicted.

"VA hides that damning fact in its official statements. The April 2014 VA Gulf War 'Fact Sheet' states that "currently, nearly 800,000 Gulf War era Veterans are receiving compensation benefits for service-connected issues." What VA doesn't say is that their definition of the 'Gulf War era' includes every veteran who has served from 1990 to the present, not just 1990-1991 Gulf War veterans. (See Fact Sheet attached.)

"Recent statements by Undersecretary for Benefits Allison Hickey provide the answer why VA is hiding this information. An April 22, 2014 article in Military Times reported that she was concerned that even using the term 'Gulf War illness' 'might imply a causal link between service in the Gulf and poor health which could necessitate legislation for disability compensation for veterans who served in the Gulf.' And on December 13, 2013, she testified that VA would be able to meet its 2015 goal of processing claims within 125 days, barring 'something like we experienced in Agent Orange [when we added] 260,000 claims in our inventory overnight in Oct. 2010. That will kill us."

Recent Rates of VA Denial of Gulf War Veterans' Presumptive Claims

Despite the latest VA intervention in 2010, the rate of denial of Gulf War veteran presumptive claims has been steadily worsening, year by year, as shown by data provided by VA for fiscal years 2011 through the first half of 2015. These claims include two types: chronic multisymptom illness claims (Fibromyalgia; Irritable Bowel Syndrome/Functional Gastrointestinal Disorders; Chronic Fatigue Syndrome); and, undiagnosed illness claims authorized under 38 U.S.C. 3.317.

A. VA Denials of Presumptive Chronic Multisymptom Illness Claims

The rate of denial of Gulf War veteran presumptive chronic multisymptom illness claims (Fibromyalgia; Irritable Bowel Syndrome/Functional Gastrointestinal Disorders; Chronic Fatigue Syndrome) has been steadily worsening, year by year. By the first half of FY15, VA was denying these claims at a rate of nearly four-out-of-every-five.

FY2011: 72.5%
 FY2012: 72.1%
 FY2013: 75.3%
 FY2014: 77.0%
 FY2015 Q1, Q2: 79.2%

"CMI = Chronic Multisymptom Illness (fibromyalgia 5025, IBS 7319, and chronic fatigue syndrome 6354) in either the hyphenated or primary code. If condition is both UDX and CMI, it is included in UDX counts."

(G) = Total Conditions Granted ("Vets")
 (D) = Total Conditions Denied ("Vets")
 (T) = Total Conditions Granted or Denied ("Vets")

Formulas: $(G) + (D) = (T)$; $(D)/(T) = \text{denial rate}$

FY2011: $743 (G) + 1,961 (D) = 2,704 (T)$; $1,961 (D) / 2,704 (T) = 72.5\%$ CMI denial rate

FY2012: $1,114 (G) + 2,877 (D) = 3,991 (T)$; $2,877 (D) / 3,991 (T) = 72.1\%$ CMI denial rate

FY2013: $1,638 (G) + 5,002 (D) = 6,640 (T)$; $5,002 (D) / 6,640 (T) = 75.3\%$ CMI denial rate

FY2014: $1,300 (G) + 4,341 (D) = 5,641 (T)$; $4,341 (D) / 5,641 (T) = 77.0\%$ CMI denial rate

FY2015 Q1, Q2: $746 (G) + 2,849 (D) = 3,595 (T)$; $2,849 (D) / 3,595 (T) = 79.2\%$ CMI denial rate

B. VA Denials of Presumptive Undiagnosed Illness Claims

VA's denial of Gulf War veteran presumptive undiagnosed illness claims is at even higher rates than VA's denial of presumptive chronic multisymptom illness claims.

The rate of denial of Gulf War veteran presumptive undiagnosed illness claims has also been steadily worsening, year by year. By the first half of FY15, VA was approving only 14.7 percent of these claims - approaching the limited odds of winning a scratch-off lottery.

FY2011: 80.5%
 FY2012: 78.4%
 FY2013: 78.6%
 FY2014: 83.1%
 FY15 Q1, Q2: 85.3%

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

Formulas: $(G) + (D) = (T)$; $(D)/(T) = \text{denial rate}$

FY2011: 480 (G) + 1,977 (D) = 2,457 (T); 1,977 (D) / 2,457 (T) = 80.5% UDX denial rate

FY2012: 628 (G) + 2,278 (D) = 2,906 (T); 2,278 (D) / 2,906 (T) = 78.4% UDX denial rate

FY2013: 925 (G) + 3,402 (D) = 4,327 (T); 3,402 (D) / 4,327 (T) = 78.6% UDX denial rate

FY2014: 627 (G) + 3,086 (D) = 3,713 (T); 3,086 (D) / 3,713 (T) = 83.1% UDX denial rate

FY2015 Q1, Q2: 339 (G) + 1,970 (D) = 2,309 (T); 1,970 (D) / 2,309 (T) = 85.3% UDX denial rate

C. VA Denials of Gulf War Presumptive Claims (Chronic Multisymptom and Undiagnosed Illness Combined):

FY2011: 76.3%

FY2012: 74.7%

FY2013: 76.6%

FY14: 79.4%

FY2015 Q1, Q2: 81.6%

Formula: [(CMI D) + (UDX D)] / [(CMI T) + (UDX T)] = denial rate

FY2011: [1,961 (CMI D) + 1,977 (UDX D)] / [2,704 (CMI T) + 2,457 (UDX T)] = 76.3% CMI+UDX denial rate

FY2012: [2,877 (CMI D) + 2,278 (UDX D)] / [3,991 (CMI T) + 2,906 (UDX T)] = 74.7% CMI+UDX denial rate

FY2013: [5,002 (CMI D) + 3,402 (UDX D)] / [6,640 (CMI T) + 4,327 (UDX T)] = 76.6% CMI+UDX denial rate

FY2014: [4,341 (CMI D) + 3,086 (UDX D)] / [5,641 (CMI T) + 3,713 (UDX T)] = 79.4% CMI+UDX denial rate

FY2015 Q1, Q2: [2,849 (CMI D) + 1,970 (UDX D)] / [3,595 (CMI T) + 2,309 (UDX T)] = 81.6% CMI+UDX denial rate

VA Intervention: Amending the M21-1

It appears that VA has made a new intervention by amending the M21-1 "Veterans Benefits Manual," which is supposed to be used for rating VA claims. However, it is not clear whether VA rating staff are aware of, let alone utilizing this manual to rate Gulf War veterans' claims.

With no new Gulf War claims data released since the second quarter of FY15, it is unclear whether this intervention has had any positive effect on improving VA's terrible denial rates for Gulf War veterans' UDX and CMI claims.

Given VA's past record, it is unclear whether this latest intervention will be just one more in a long line of ineffective "solutions". Past VA "solutions" have done nothing to quell VA's extraordinarily high denial rates of these veterans' claims.

Claims Denial Conclusions

In short, VA's denial rates for Gulf War UDX and CMI claims remained high over time. In recent years, VA's denial rates have been increasing for these Gulf War veterans' claims.

This is in complete contravention to the intent of the 1998 laws passed to improve Gulf War veterans' ability to get their claims approved, while prioritizing treatments was made an even higher priority - but not by VA.

CLAIMS DATA RECOMMENDATIONS

VA Needs to Track, Analyze, and Regularly Report VA Utilization Data for 1990-91 Gulf War Veterans.

In 2010, VCS Director Paul Sullivan testified, "In 2002, VA staff conducted a thorough review of granted and denied claims among Gulf War veterans at the diagnostic code level. VA staff concluded that VA regional offices with large claim backlogs and without training on UDX claims under 38 CFR 3.317 approved few (about 4 percent) of Gulf War veterans claims. In contrast, VA regional offices with small backlogs that received training from VA Central office approved far more UDX disability benefit claims (about 30 percent). At present, VA has no idea how many UDX claims have been granted or denied."

Today, it is unclear whether VA is consistently tracking UDX claim denials and approvals. Certainly, VA is not publicly reporting that data, at least not in any way that is regularly and readily accessible to Gulf War veterans or the veterans advocacy community.

VA must return to the regular public reporting of carefully collated and analyzed Gulf War veterans' claims and VA usage data.

VA must return to the regular public reporting of carefully collated and analyzed Gulf War veterans' claims and VA usage data. VA must be held accountable for its actions, and without easy public access to this VA data, accountability will remain difficult to achieve.

CONCLUSIONS

If we measure VA's success by how it has approved Gulf War veterans' claims twenty-five years after the war, VA has failed most ill and suffering Gulf War veterans. VA has circumvented or ignored most of the aims of the 1998 laws. Despite various high-level interventions by VA to improve the claims process, the denial rates remain unacceptably high and are getting worse each year.

In twenty-five years, VA has made little progress in finding effective, evidence-based treatments for Gulf War Illness, denied Gulf War veterans disability claims nearly across the board, and relegated these veterans to the realm of mental health interventions.

VA has the authority to develop new presumptives for these ill and suffering veterans, but unlike with Agent Orange, has failed to identify any new conditions beyond a set of rare endemic infectious diseases that affect almost no one. The latest report by the Institute of Medicine, shaped by VA's contract, argues that individual Gulf War exposures are forever unknowable. We knew that when seeking the 1998 legislation, aimed at connecting generic exposure data with health outcomes. VA has stymied those efforts.

Twenty-five years later, ill Gulf War veterans are still in pain. They are suffering. They have been begging for help for years and years. As I noted in my February 23 testimony, the letter, the spirit, and the intent of the 1998 Persian Gulf War laws have yet to be achieved.

On this 25th anniversary of the war, our Gulf War veterans are still waiting for VA to provide effective, evidenced-based treatments for Gulf War Illness. Given their level of disability, the least we can do is to cause VA to approve their presumptive, service-connected disability claims.

Please help fix these serious issues, once and for all.

ADDITIONAL INFORMATION

Public Law 102-1, enacted in January 1991, authorized the President to start the Persian Gulf War, known at the time as Operation Desert Shield and Desert Storm. Offensive U.S. military action against Iraq began on January 17, 1991 local time (the evening of January 16 in the United States).

Public Law 102-25, enacted in April 1991, retroactively established the start date of the Gulf War as August 2, 1990, the date Iraq invaded Kuwait. Neither Congress nor the President have ever ended the Gulf War, and the conflict continues through to the present. According to 38 CFR 3.317(e)(2), "The Southwest Asia theater of operations refers to Iraq, Kuwait, Saudi Arabia, the neutral zone between Iraq and Saudi Arabia, Bahrain, Qatar, the United Arab Emirates, Oman, the Gulf of Aden, the Gulf of Oman, the Persian Gulf, the Arabian Sea, the Red Sea, and the airspace above these locations. (Authority: 38 U.S.C. 1117, 1118)."

Public Law 102-85, enacted in November 1992, authorized the creation of the Gulf War Registry as well as the Gulf War Veterans Information System (GWVIS). VA began preparing GWVIS reports in 2000, and VA ceased producing the reports in 2008 after VCS observed that VA's GWVIS reports were incomplete. VA has since confirmed that it failed to update computer programming to identify all disabled Gulf War veterans.

Public Law 103-210, enacted in December 1993, required VA to provide healthcare on a priority basis (Priority Group 6).

Public Law 103-446, enacted in November 1994, expanded access to VA disability benefits so ill Gulf War veterans could obtain VA medical care under for the undiagnosed illnesses. The law included a long list of toxins to which Gulf War veterans were presumably exposed, including depleted uranium, fumes and smoke from military operations, oil well fires, diesel exhaust, paints, pesticides, depleted uranium, infectious agents, investigational drugs and vaccines, indigenous diseases, and multiple immunizations.

Public Law 105-277, enacted in 1998, significantly expanded the list of toxins it presumed Gulf War veterans were exposed to during deployment to Southwest Asia, and mandated contracts between VA and the National Academy of Science (which ultimately was conducted by NAS's Institute of Medicine (IOM)) to determine association between Gulf War exposures and Gulf War veterans' health conditions.

Public Law 105-368, enacted on Veterans Day 1998, expanded Public Laws 103-210 and 103-446. It also directed the creation of the the Research Advisory Committee on Gulf War Veterans' Illness (RAC), which VA failed to create the RAC until 2002 - more than three years after the statutorily mandated deadline.

RONALD E. BROWN

Thank you, Chairman Coffman, Ranking Member Rep. Ann McLane Kuster, Rep. Dr. Ralph Abraham, Rep. Dina Titus, and Members of the House Veterans' Affairs Subcommittee on Oversight and Investigations. 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, in an attempt 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. Secondly, 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.

This year marks the 25th anniversary of the liberation of Kuwait. Of the nearly 700,000 U.S. military personnel that served in the 1990-1991 Persian Gulf War (Operation Desert Storm) studies indicate that approximately 25-32% of these veterans became ill with what is now referred to as Gulf War Illness. These U.S. Warfighters face a higher denial rate than any other era veteran.

In May 2015 the VBA provided the NGWRC data on Gulf War claims. The data wasn't exactly what we had asked for but it did show some very disturbing numbers. Out of 193,436 Undiagnosed Illness (UDX) or Chronic Multi-Symptom conditions claimed only 32,631 was approved service connection leaving 160,805 conditions denied. That's an approval rate of 17% and a denial rate of 83%. The VBA has stated that the denial rate is actually around 70%-74%.

This data shows that Desert Storm veterans are compensated for direct service connection conditions (50,523) equivalent to other era veterans. Emphatically, this data revealed disturbing data that showed most Gulf War veterans are denied presumptions of service connection for illnesses (CMI) associated with service in the Persian Gulf Theater.

The NGWRC asked the VBA for clarification. The VBA provided us with data in July 2015 that shows the reasons for denials of first time claims filed from 2011 through 2015.

This data is for denials of claims for the diagnosable but medically unexplained chronic multisymptom illness (CMI) conditions such as Chronic Fatigue Syndrome, Fibromyalgia, and Functional gastrointestinal conditions which are presumed by Congressional intent (See: U.S.C 38 § 1118) to be caused by service in the Southwest Asia Theater of operations. This data shows that a total of 18,218 veterans filed claims for 22,863 conditions that were denied.

The data is broken down by specific categories with the number of claims denied in each category, they are as follows:

- No Causation - 8 conditions.
- No Diagnosis - 9,710 conditions.
- Not aggravated by service - 25 conditions.
- Not Established by Presumption - 2,176 conditions.
- Not in Country - 10 conditions.
- Not Caused/Incurred by Service - 10,568 conditions.
- Not Secondary - 344 conditions.
- Not Well Grounded - 1 condition.
- Not in Line of Duty - 3 conditions.

The NGWRC finds two of these categories extremely troubling and evidence of systemic problems within the Veterans Benefit Administration (VBA) in regards to Gulf War Illness claims. The categories "Not Established by Presumption - 2,176 conditions denied" and "Not Caused/Incurred by Service - 10,568 conditions denied". These two categories account for 57% of the 22,863 conditions that were denied. These two categories absolutely make no sense given the fact that by statue (U.S.C

38 § 1118) these conditions are presumptions of service connection for illnesses associated with service in the Persian Gulf War. Congressional intent is such that these illnesses "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".

To date the Veterans Benefit Administration (VBA) has not been able to provide a rational explanation as to why these two categories warrant denials given the statute. I addressed this issue with former Under Secretary of Benefits Allison Hickey who acknowledged a potential problem and stated that she would have VBA randomly pull a statistical portion of these claims to check for accuracy. She stated that she would have the results by October or November 2015. Her replacement, Danny Pummill, has also promised to get us the results from this accuracy check but as of today we still do not have the results.

The Veterans Benefit Administration (VBA) has worked with us to update both their training and procedure manual, the M21-1. They did an outstanding job, the new changes to their M21-1 provides sufficient guidance to enable C&P examiners to provide accurate Gulf War Illness exams and it provides VA adjudicators all the necessary information to accurately decide these claims.

Unfortunately, the Veterans Benefit Administration (VBA) has been ineffective in getting the front line raters at the regional Benefits offices to do the training or use the updated M21-1 manual. This is evident by recent denials of chronic multisymptom illness (CMI) claims in which the adjudicator or the C&P examiner imposed a nexus requirement and denied the veteran's claim because "no record or evidence of such illness was found in the veteran's military medical records". The front line adjudicators are not following statute, VA regulations, VA procedure (M21-1) and U.S. Court of Appeals for Veterans' Claims case law.

The NGWRC has been very successful in winning appeals at the Regional Benefits Office level, by simply pointing out the statute, VA regulation (38 CFR 3.317), the appropriate section in the M21-1 procedure manual, and the U.S. Court of Appeals for Veterans' Claims case *Gutierrez v. Principi*, 19 Vet.App.1 (2004) in which the court upheld U.S.C 38 § 1118 and determined that a Gulf War veteran does not have to prove any link to the veteran service and his or her current CMI condition.

The NGWRC has also been successful working with policy makers inside the Veterans Benefit Administration (VBA). We are very thankful to these policy makers for the positive changes made to the M21-1 manual, yet we find ourselves awestruck by the VBA's inability to train the front line adjudicators on these types of claims. As positive as the changes are to the M21-1, these changes are useless if the examiners and raters aren't using and following the regulations highlighted in the manual.

The only hope Gulf War Veterans have to fix the high denial rate of Gulf War illness related claims is for the Veterans Benefit Administration to first recognize the problem and provide ongoing training to the front line adjudicators in all Regional Benefits Offices. This training would further serve to reduce the growing number of appeals.

Recommendations:

- 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. Gulf War illness related claims make up 29% of the current back log. This training would further serve to reduce the growing number of appeals. If 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. This manual provides the adjudicators all the references needed to accurately adjudicate claims. References in this manual include U.S. code, VA Regulation (CFR) and related U.S. Court of Appeals for Veterans' Claims cases. This manual is an excellent tool if used.
- Transparency, the VBA must continue to provide Veteran Service Organizations with data on these types of claims. This ensures that VSO organizations can monitor and keep track of denial and approval rates as well as provide critical information to the veterans they represent.
- I think it would help if VA also provided more specificity to veterans on why their claims are denied. For example, VA doesn't always inform the veteran about what exactly could be done to help move the claim - but I believe the following is critical for veterans to know so they can meet the 10% threshold:
- The veteran must specifically indicate the condition is "due to Gulf War;"

- The veteran must describe the symptoms related to the condition and its existence of more than 6 months;
- The veteran should provide any medical or nonmedical evidence (such as personal statements from family on the impact of the condition to the veteran, family, etc.

Respectfully,

Ronald E. Brown
President
National Gulf War Resource Center

