

September 7, 2022

The Honorable Denis McDonough
Secretary
U.S. Department of Veterans Affairs
810 Vermont Avenue NW
Washington, D.C. 20420

Dear Secretary McDonough:

Florida has one of the highest populations of veterans in the country, with 1.5 million veterans calling the Sunshine State home. During their service, these brave men and women selflessly put country above self. All veterans should have the confidence that their concerns are the foremost consideration by the U.S. Department of Veterans Affairs (VA) when it examines benefits and services to make processes and procedures more efficient.

I continue to be frustrated when hearing stories from constituents about their experiences with the Veterans Benefits Administration (VBA), and the Board of Veterans' Appeals (BVA), regarding the lengthy process they face in seeking accurate benefit claims and appeals decisions. As the VA explores solutions to make these processes work better for veterans, I highlight certain concerns that I am hearing from Florida's veterans to ensure that VBA takes into account the experiences of the men and women who sacrificed so much for our country when making needed process changes.

As new legislation expanding veterans' benefits is implemented, it is essential that VBA identifies current shortfalls and develops a detailed plan for appropriate changes to ensure that veterans receive timely decisions. Congress recently enacted the *Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics (PACT) Act of 2022* (P.L. 117-168), which includes key provisions from legislation I authored with Senator Kirsten Gillibrand (D-NY). While the *PACT Act* is a great step forward and was long overdue, the implementation of this new law will prove challenging if the VBA does not make the appropriate changes to ensure that veterans can receive their decisions in a timely manner. With 3.5 million veterans now eligible for benefits under the *PACT Act*, the expected influx of claims offers the VBA an important opportunity to identify current challenges, and further implement needed changes.

One of the main issues affecting Florida's veterans with their claim and appeals decisions is the long wait times that veterans face when filing their benefits claims. Additionally, veterans face lengthy and complicated appeals processes, frequently having to wait more than a year for a claims decision, and years for appeals decisions. For legacy VA appeals, those dated before February 19, 2019, the VA's website acknowledges that for appeals under review by a Veterans Law Judge at the Board of Veterans' Appeals (BVA), "it could take 5-7 years for you to get a

decision.”¹ The VA’s backlog of claims only exacerbates this process. At the end of June, the total number of claims pending for over four months stood at 187,540.² It is essential that as the VBA begins to process an increased amount of benefit claims with more veterans now eligible under the *PACT Act*, that the VBA identifies ways to more efficiently reduce the number of backlogged claims and further ensure that veterans receive their decisions in a timely manner.

Another area of concern for veterans is with their BVA appeals. As mentioned above, veterans wait years for decisions about their appeals. This is not sustainable for veterans who need relief right away, and whose day-to-day living is greatly impacted by the benefits afforded to them by the VBA. While I recognize that there are instances where a veteran’s case may receive advanced-on-the-docket status (AOD) due to certain serious documented hardships, the lack of a required timeframe for veterans to receive decisions is unhelpful, and leaves veterans feeling unsure about what the future holds. It is important for the VBA to acknowledge that when there are changes to eligibility criteria for certain critical benefits programs, such as recent changes in eligibility criteria for the Program of Comprehensive Assistance for Family Caregivers (PCAFC) that resulted in an increase in veterans filing claims and appeals, that they subsequently take steps to increase attention to those cases at BVA.

Additionally, I hear from many veterans that they receive their appeals decisions from different BVA board members than the official who had originally heard their case. This is discomfoting for veterans who feel that the VA did not take their character and circumstances into account during the decision. Knowing that they are receiving a decision from the same board member that considered their arguments and has a more accurate representation of the facts and decisions of the case allows a veteran to believe that the appeal has been properly and appropriately adjudicated. Understanding that this may not always be possible, the BVA should work to ensure veterans know who will be reviewing their appeals, where their case is, and who will be making determinations.

In addition to timeliness, the VA must closely monitor the instruction given to VA employees who are developing and rating claims. The August 25, 2022 VA Office of Inspector General (OIG) report regarding the need for improved processing for veterans’ claims related to contaminated water exposure at Camp Lejeune found that VA Regional Office staff at various offices incorrectly processed 37 percent of claims. That amounts to approximately 21,000 claims where veterans received wrong decisions, creating further headaches for them and their families. The report found that the mistakes by VA employees underpaid affected veterans by \$13.8 million. As this claims processing was for eight presumptive conditions, I remain concerned at how VA will timely and accurately process *PACT Act* claims with new presumptive conditions.

As the VA explores solutions to make claims and appeals processes more efficient for veterans, I expect the VA to take into account the concerns of Florida’s veterans, and veterans

¹ <https://www.va.gov/decision-reviews/legacy-appeals/#:~:text=The%20Veterans%20Benefits%20Administration%20usually,or%20all%20of%20the%20appeal.>

² <https://www.militarytimes.com/veterans/2022/06/27/overdue-veterans-disability-claims-down-almost-a-quarter-in-last-four-months/#:~:text=The%20claims%20backlog%20is%20nearly%20three%20times%20higher%20than%20in%20early%202020.&text=The%20backlog%20reached%20as%20high,the%20100%2C000%20case%20level%20again.>

across the country, when making needed reforms at the VBA. We owe it to our veterans to ensure that their concerns remain at the center of decisions that affect the benefits they have earned. Therefore, I request the answers to the following questions:

1. Veterans waiting years for decisions on their claims and appeals is unacceptable. What steps does the BVA take after a program, such as PCAFC, is changed, or more veterans become eligible for benefits, in the case of *PACT Act*, in order to address expected influx of claims?
 - a. Additionally, what steps is the VA taking now to streamline the claims and appeals processes before the expected influx of *PACT Act* claims and PCAFC appeals?
2. As many veterans and Veterans Service Organizations frequently say, care and benefits delayed are care and benefits denied. What consideration has the BVA given to adding a temporal requirement for veterans to receive decisions on their cases?
 - a. What challenges does the VA anticipate would arise with imposing a temporal requirement?
3. While hiring additional employees to assist with the backlog in claims and continuing to automate claim processing is a step in the right direction, and the *PACT Act* authorized several provisions to help, it is clear more action is needed to address the claims backlog.
 - a. What is the VA's process for determining how to allocate expected resources for increased claim workload?
4. The VA OIG report regarding Camp Lejeune related claims recommended the VA Under Secretary for benefits centralize all Camp Lejeune-related claims processing at VA Regional Office Louisville or initiate a plan to mitigate the error rate disparity between the Louisville Regional Office and other regional offices.
 - a. Will the VBA consider the VA OIG report on Camp Lejeune instructive, and determine if it should designate certain regional offices as central processing offices for *PACT Act* claims in order to allow their employees to process more claims thereby improving timeliness and accuracy in claims decisions?
 - b. Please provide the error rate for the Camp Lejeune claims processing by the VA Regional Office in St. Petersburg for the period covered by the report.

Thank you for your attention to this important matter. I look forward to working with you to ensure that the VA's claims and appeals processing procedures address the concerns of veterans at all levels of the VA's benefit decision-making process.

Sincerely,



Marco Rubio
U.S. Senator