

Reviewing VA's Implementation of the PACT Act

May 16, 2023

Statement of

Patrick Murray, Director
National Legislative Service
Veterans of Foreign Wars of the United States

For the Record

United States House of Representatives
Committee on Veterans' Affairs
Subcommittee on Disability Assistance and Memorial Affairs

With Respect To

“Reviewing VA's Implementation of the PACT Act”

WASHINGTON, D.C.

Chairman Luttrell, Ranking Member Pappas, and members of the subcommittee, on behalf of the men and women of the Veterans of Foreign Wars of the United States (VFW) and its Auxiliary, thank you for the opportunity to provide our remarks on this important issue.

The VFW continues to applaud the passage of the *Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022 (PACT Act)*, the most significant piece of veteran legislation this century and perhaps of all time. Through the efforts of the VFW, our Veterans Service Organization (VSO) partners, stakeholders and other engaged entities, and veterans and their families, the call to action was heard. Congress put partisan differences aside and did what was right for veterans exposed to toxins, radiation, chemicals, burn pits, and other substances that often required prolonged medical treatment and financial hardship. Now is not the time to rest. The hard work

NATIONAL HEADQUARTERS

406 W. 34th Street
Kansas City, MO 64111
Office 816.756.3390
Fax 816.968.1157

WASHINGTON OFFICE

200 Maryland Ave., N.E.
Washington, D.C. 20002
Office 202.543.2239
Fax 202.543.6719

info@vfw.org
www.vfw.org

continues. Since the moment the president signed the bill into law, organizations like the VFW have amplified the effort to educate and inform veterans and encourage them to apply for their rightfully earned benefits. We thank the subcommittee for the opportunity to provide comments.

The passage of the PACT Act was a monumental advancement of veteran benefits for veterans of all eras. The VFW was heavily invested in its passage because this multi-generational bill directly affects our multi-generational organization. The VFW is comprised of the different generations of veterans who will benefit from this new law, which is why we care so deeply about it.

Too many veteran advocates viewed the passage of the PACT Act as the finish line in a long and arduous overdue process. The VFW viewed the signing of the PACT Act as the completion of phase one in providing the necessary care and benefits veterans have earned. Phase two is delivering on the promises made. In early 2023 the VFW launched www.pactactinfo.org to help guide veterans through the benefits process for free, with no strings attached.

Our website, www.pactactinfo.org, is designed to educate veterans and claimants on available benefits under the law by answering a few simple questions. If eligible, the veteran is referred to one of our professionally trained, accredited representatives to learn more about potential benefits or to get assistance in filing a claim. We have had over seven thousand inquiries in just the first few months of the website being operational, demonstrating that veterans have an ardent desire for accurate information regarding any potential benefits for which they may be eligible. Many of these veterans served in several conflict areas, and have multiple service-connected issues they are claiming. This is not exclusive to states that traditionally have a higher veteran population. We have been contacted by veterans from every state in the union and veterans who live overseas.

What we have learned from this effort has been revealing. Thus far 6,500 veterans who served in Iraq, Afghanistan, Saudi Arabia, or Kuwait have reached out to us for assistance. We have received 2,600 inquiries from Vietnam veterans. Five hundred Camp Lejeune veterans or family members have shown interest in either receiving more information or filing an action. Others from different eras and theatres have contacted us as well. Of the top five most common conditions claimed through pactactinfo.org, three were respiratory or digestive issues. The results from the VFW's referral tool confirm the PACT Act was necessary and is being widely used by eligible veterans.

It is proof positive that there is a strong interest in the benefits this law provides and the vital role that we as veterans advocates play in helping the Department of Veterans Affairs (VA) deliver them. This is why we have partnered with Humana and Psych Armor in a project called "15 Things Service Officers Want You to Know" to add a layer of consumer

protection, let claimants know our services are ALWAYS FREE, alert them to bad actors and exorbitant fees, and aggressively spread the message in conjunction with our partners like Disabled American Veterans, Wounded Warrior Project, and the National Association of County Veterans Service Officers.

Challenges We See

As with any significant endeavor, implementation of the PACT Act has presented challenges. These have included ramping up staffing, training new hires to an acceptable level to begin adjudicating thousands of PACT-related claims, accounting for lost institutional knowledge from normal attrition like retirements or transfers to different federal agencies, and adhering to the core tenets of this legislation. It must be recognized positively that VA was prepared to handle these challenges with foresight and proper planning.

To say that VA has experienced an uptick in submissions to record levels is most certainly an understatement. Adjudicators are deciding record numbers of claims daily, and for as many decisions that are completed dozens more are filed. The VFW applauds VA's aggressive marketing campaign and collaboration with their VSO partners and other stakeholders to alert veterans, their family members, and survivors to potential benefits. Yet, for many people who will benefit from this significant legislation there have been other inadvertent issues.

Regrettably, Section 804, The Camp Lejeune Justice Act, has taken over as the face of the bill. This is a distraction from what the PACT Act is. You cannot turn on your television, open a publication, or look at social media without being assailed by near-endless advertisements from law firms or companies of good or ill reputation, that want to help eligible claimants file for remediation or VA benefits. Sadly, this overshadows the true intent for whom and for what the PACT Act was implemented. In response to this continued confusion, the VFW is doing its part to enlighten veterans, their family members, and survivors on the differences and the outcomes of joining in a claim against the government for exposure, and the outcomes this may have on VA benefits and any settlements received by injured parties. We have entered into memorandums of understanding with two law firms—Bergmann and Moore and BMBFC—that have agreed to certain professional and ethical standards in representing claimants in these endeavors. Now, we urge Congress to step up and protect these interested parties by enacting clear and explicit policies on fee caps.

Consumer Protection Issues

Through all of this, some in Congress maintain that the handling and processing of VA claims requires no special education or training to be successful or avert disaster. Moreover, some lawmakers sense that those who consult in such affairs should be able to charge

extortionate fees and not be subject to the same fines, penalties, and VA oversight as those who are professionally trained and accredited before VA to handle such matters.

The time has come for bipartisan action to be taken. Recently, a VFW-accredited representative was notified by a claimant that she had been contacted by an unscrupulous law firm. This firm indicated it had received a claim packet from the representative. The representative did not know anything about it. However, the law firm insisted that the claimant sign and return the forms. Although the claimant was confused with all of this, she signed the forms. The VFW then had to have the veteran sign a new power of attorney with us. Who knows how much this would have cost the claimant, or if she is still beholden to a contract obtained by deceit? The VFW will not stand idly by and allow this to happen. There is no compromise, there is only full compliance with established regulations, and we have to insist that anyone who touches a disability claim be accredited. That is why the *GUARD VA Benefits Act of 2023* is vitally important to safeguard veterans and their families against the deceitful agreements and immoral practices of some who claim to be advocates. It is unforgivable for fellow Americans who are often fellow veterans to imperil and financially ruin their comrades.

As the nation's oldest organization of combat veterans, the VFW has a moral obligation to continue to protect those who served our great nation and defend the Constitution of the United States. Along with that comes the responsibility of keeping a watchful eye on the Department of Veterans Affairs as well. The VFW constantly assesses how VA's programs and initiatives impact the veterans of our organization and this nation. Traditionally, we have proven to be quick to praise both Congress and VA, as we have on several occasions when those decisions are good for veterans and their families. We will always reserve the right to be critical when we feel decisions made are harmful. In all of this, as a "partner" working to the same end, it is fundamental to the relationship that we also offer solutions to the problems we identify and work to resolve differences amicably.

Development of Claims

The VFW is grateful that Congress and the Secretary authorized new presumptive conditions that clear the bureaucratic red tape many veterans faced in trying to prove eligibility for their rightfully earned benefits. We are also grateful for the provisions to extend access to VA health care for the thousands of veterans who may otherwise not have been eligible or had previously been denied access. While this is another positive step in improving access and care for many veterans, the VFW has not seen the expected heavy influx of new enrollees. We attribute this to the fact that many consumers of Veterans Health Administration services are already enrolled as a standalone service or because of service-connected disabilities. The upside is that veterans are finally seeking benefits for persistent chronic conditions. We have assisted with 2,500 claims for hypertension, more than 2,000 related to sinusitis/rhinitis, 1,800 on respiratory issues, and more than 1,800

gastrointestinal issues. While the burden of proof for service connection has been relaxed, hurdles still remain.

VA must implement clear and understandable policies not only in regulation but in its overall processing of PACT Act claims. Consistency is vital. As the VFW has testified on numerous times, rushing to implementation is not a solution, nor is not communicating the intent of any new policy or process to the field without proper training and oversight. Too often, the playing field is uneven across the enterprise. What is granted in Waco is denied in White River Junction even though the evidence of record is the same. This is harmful to claimants, and we are confident it is not the intent of VA to arbitrarily deny benefits based on a weak interpretation of the law.

Most in the business of providing claims assistance or having any policy experience knew that claims for hypertension would be among the first to see a sizeable increase. Title 38 Code of Federal Regulations is clear in adjudicating claims and providing the percentages for those disabilities. The VFW continues to see inconsistencies in adjudicating these claims. Many times, the rater is assigned a zero percent rating when the evidence empirically indicates a higher evaluation. In looking more closely at these, our quality assurance team has discovered that had a better review of medical history taken place, the proper rating most likely would have been assigned from the start. This is not only problematic in the sense that it has cost the veteran benefits, but it also indicates a larger training and processing issue that all the evidence of record is not being considered.

Earlier this year, we provided testimony on several topics that are priorities for our organization. One of them was the continued overdevelopment of claims. Overdevelopment is another indication of a training shortcoming and misapplication of accepted policy. Presumptive claims are the easiest and least time-consuming for developers and adjudicators. It just needs to be verified and processed provided it meets a minimum of criteria. If a condition is presumptive, VA concedes exposure, or will not challenge that the illness or injury occurred while on duty. A nexus is generally not required. Yet, repeatedly VA will order an examination to determine the etiology. While it is more noticeable now due to PACT Act claims, those are not the only instances of its occurrence. Thousands of dollars that could be used for other purposes are being wasted on unnecessary examinations, man-hours, and development.

We cannot stress enough that training and repetition combined with proper oversight are quintessential to accuracy and timeliness. The VFW continues to see claims being denied based on erroneous negative nexus opinions for conditions that are now accepted as presumptive. Fortunately, for the more experienced rating veteran service representatives who remain, this has resulted in granting the claimed issue. However, we have also observed presumptive claims being denied for a negative nexus that was not required in the first place.

Another concern that has arisen is the general processing of overall claims that have PACT Act contentions along with other unrelated disabilities. The Veterans Benefits Administration (VBA) is ordering examinations for PACT Act issues being claimed, some of which we have noted may be entirely unnecessary. Non-PACT-Act issues are completed but the veteran must continue to wait needlessly for the entire claim to be adjudicated before receiving a decision. This only prolongs the claims cycle and results in more frustration for the claimant who must wait for examinations to be processed.

Adding to the continued misinformation and sporadic confusion is the Toxic Exposure Risk Assessment (TERA) and the application of those policies. The VFW thanks the under secretary for benefits and VBA for including us in their PACT Act off-site seminar recently held in Atlanta. This was an opportunity to hear directly from VA executives and decision makers about the challenges they have had with the implementation of policy and how it impacts the adjudication of PACT Act claims. One thing was abundantly clear. Even VA, sometimes at the highest levels, is confused about TERA and its interaction in the process. Because of the way the law was written, VA must order examinations if there is even the remotest possibility of TERA. In most cases, the VFW has observed these required examinations to be wholly pointless. We recently assisted a veteran who was claiming tinnitus only to have the claim denied because the decision maker opined that it was not related to toxic exposure. We continue to be made aware of this requirement and VA completely failing to consider any other path to service connection. It is apparent that between the cloudy topic of work credit, production standards, incomplete training, and the wrong focus, VA has somewhat lost its focus and is improperly leaning heavily on possible toxic exposure development, rather than determining that direct service connection is the correct path to take.

Examinations Issues

The VFW is pleased with the overall timeliness of decisions given the enormity of the number of claims that have been received. We acknowledge that PACT Act claimants, in most cases, receive decisions very quickly. We even support the suspension of punitive action based on quality review as the workforce continues to navigate changes. We must stress that a greater emphasis be put on corrective training and consistency in application across the enterprise. VA must learn from common errors and implement uniform training to reduce wait times even further. We are confident this will produce accurate and high-quality ratings every time.

VA turned its focus away from providing in-house disability examinations many months ago. The reliance on contract examiners to handle the increased capacity is near or at an all-time high. While we understand the transition to nearly full-time contract examiners, we cannot continue to endure the irregularities and continuous miscommunications that have taken place. Veterans have contacted us with persistent complaints about scheduling

examinations and then receiving incorrect notification letters. Often there is no consideration given to the timing of appointments or the distance the veteran must travel. The VFW has received complaints from veterans having to travel hundreds of miles roundtrip between examiners or being scheduled for examinations miles apart, knowing they will never arrive on time and risk being deemed a “no-show.” It is perilous to give an examiner such broad authority without guidelines to determine if a veteran missed a scheduled appointment. When we have looked more deeply into complaints, some examiners willfully marked veterans as missing examinations despite requests to be rescheduled. If true, this negates any possible penalty the provider may incur and allows them to be compensated for the missed examination when it finally takes place.

The VFW has continually suggested veterans be given agency over their disability examinations because it would lead to better outcomes for veterans and contractors, and be a more responsible use of taxpayer funds. Vendors that contract to provide disability examinations often have portals and tracking systems that are outside of VA’s infrastructure. We have found this to be the best way for veterans to manage the scheduling of their required compensation and pension examinations. It is near-instant communication with the provider where the veteran can upload questionnaires and forms, change appointments when necessary, or perform other prerequisites.

We commend VA for instituting the Medical Disability Evaluation Office (MDEO) to be a central administration point for contract disability examinations, but more robust and persistent oversight of contract vendors must be forefront. Penalties incurred for incomplete examinations, not completing requests on time, or any number of contractual errors must go beyond reduced contracted financial obligations or loss of incentives. From the quality of the examination to the qualifications of the examiner, all must be monitored equally. Examiners must fully understand the entire claims process and the full impact that their properly or improperly completed work has on veterans seeking benefits. This office must be made aware they too are full partners, along with the VSO community in this endeavor.

Transparency is a word with which MDEO is not familiar. VSOs have been asked to submit complaints to the MDEO corporate mailbox, yet the generic responses received lack substance or resolution. The VFW would find it helpful if we were familiar with the contents of the contract entered, so we know how best to respond to veteran complaints. Short of filing a Freedom of Information Act request, we are in the blind. On numerous occasions, we have submitted complaints to MDEO or encouraged affected veterans who feel the quality of their examinations was lacking, yet we never learn of any corrective actions taken nor will this office share Quality Review standards as to the accuracy of examinations completed by contracted examiners. Given the nature of the business model, our accredited representatives along with the contract examination staff are among the first critical touchpoints for those who seek benefits. Though the VFW has excellent communication and collaboration with examination vendors, we ask VA to afford similar recognition of the

corresponding roles that accredited representatives and contract examiners play in the process.

A modern innovation from VA that has been in development over the last several months is the Automated Decision System. This new platform, along with the continued development and refinement of standardized forms has been an improvement for claims processing. In the Veterans Benefits Management System—VA’s claims management system—the claims file is flashed as a PACT-related claim which allows developers to quickly identify it as related to the new law and presumptions for proper processing. By leveraging technology to identify keywords and information for specific claim types, the system then determines if there is adequate evidence of record to proceed to a decision. If there is not, then the file continues in the development phase until finally adjudicated. The VFW welcomes this process and continues to encourage its progress. We see the pluses in getting benefits into the hands of deserving veterans as quickly as possible. However, we continue to hold that VA must never rely solely on automated decisions for the sake of reporting numbers. All decisions must be subject to human quality review for accuracy, and we must also caution once again about rushing to implement change for change's sake. The addition of new issues for consideration of this process must be deliberate, and we ask that VSOs continue to be a part of that conversation.

Chairman Luttrell, this concludes our testimony. Again, the VFW would like to thank you and Ranking Member Pappas for the opportunity to offer our comments on these important issues to this subcommittee.

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 2023, 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.