

STATEMENT FOR THE RECORD
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THE AMERICAN LEGION
BEFORE THE
SENATE COMMITTEE ON VETERANS' AFFAIRS
ON
“SUPPORTING DISABLED VETERANS: THE STATE OF CLAIMS PROCESSING
DURING AND AFTER COVID-19”

MAY 12, 2021

Chairman Tester, Ranking Member Moran, and distinguished members of the committee, on behalf of our National Commander, James W. “Bill” Oxford, and our nearly 2 million members, we thank you for inviting The American Legion to comment on the state of disability claims processing during the COVID-19 pandemic.

The Rise of ACE Examinations

In April 2020, the risk of coronavirus infection forced Department of Veterans Affairs (VA) to suspend in-person Compensation and Pension (C&P) exams, which contributed to a backlog that continues to challenge the Veterans Benefits Administration (VBA). The backlog accelerated the VA’s use of Acceptable Clinical Evidence (ACE) examinations, first introduced in 2013.¹ VBA ordered refresher training for its disability claims processors, focusing on the identification of medical records that would allow decisions to be made with the ACE process. VBA also provided guidance to its call center personnel that would assist them in offering telehealth appointments or an ACE review instead of traditional in-person exams. From March 2020 through March 2021, VBA conducted approximately 102,000 ACE exams.²

One major advantage of the ACE process is that it does not require in-person exams, therefore eliminating the need to schedule veterans for appointments. This also eliminates other problems that affect veterans: unreturned phone calls, missed appointments, and marking veterans as “no shows” – an action that can have a negative impact on disability claims. For VA-contracted examiners, a key benefit of ACE is less time is spent conducting in-person C&P exams, giving examiners more time to complete Disability Benefits Questionnaires (DBQs).³

An American Legion service officer in Connecticut reported that his “... *clients have seen positive results from the use of ACE, most especially two Vietnam veterans suffering from Parkinson's disease. One claim was new and the other was a disability rating increase. The first client had a diagnosis and progress notes provided by his private practitioner, which were deemed sufficient*

¹ “[ACE Eliminates Need for Some In-Person Disability Exams](#),” Vantage Point, Dept. of Veterans Affairs, March 22, 2013.

² “[VBA says it will reduce disability claims backlog by fall, but Congress isn’t so sure](#),” Federal News Network, March 23, 2021.

³ “[Fact Sheet: Acceptable Clinical Evidence \(ACE\) to Support the Compensation and Pension \(C&P\) Disability Examination Process](#),” Office of Disability and Medical Assessment, December 16, 2016.

by the Regional Office. The other veteran was enrolled in VA Healthcare, and a telehealth consult with his VA clinician provided Acceptable Clinical Evidence that the VA Regional Office relied on to grant the increase. ACE has also been utilized to adjudicate claims for diabetes mellitus type II, prostate cancer, and to establish earlier effective dates in more than a few cases.

“I recommend ACE be developed and utilized proactively in all cases where appropriate, while noting the certainty and up-to-date findings and opinions obtained through the use of in-person C&P exams, with a focus on cases seeking a Supplemental Claim Review.”

Despite the increasing use of ACE exams, VA’s Deputy Assistant Inspector General for Audits, Brent Arronte, stated that about 763,000 in-person C&P exams were conducted between May 2020 and March 2021 – more than seven times the number of ACE exams done in the same period. Eight years ago, VA reported that its 15-month pilot program determined that 38 percent of disability claims submitted by veterans were eligible for ACE exams.⁴ Yet from March 2020 through March 2021, only about 12 percent of disability claims underwent the ACE process. This clear disparity seems to indicate that ACE exams are not being fully leveraged and that many C&P exams currently being scheduled are unnecessary.

Eliminating the Backlog with ACE

The effective use of the ACE process can help VBA eliminate the current C&P exam backlog, which creates undue hardship for veterans. VA’s Office of Inspector General, in a November 2020 report, recommended increased use of ACE exams as one option for reducing the backlog.⁵ This consideration is especially urgent at a time when many veterans are in financial distress and have lost their jobs, their homes – or both – as a result of the pandemic.

On May 27, 2020, a Legion service officer participated in a VA Regional Office briefing where the issue of C&P exams was discussed, “... *highlighting the inability of VA and its contractors to conduct in-person exams. At that time, approximately 30,000 exams had been conducted since March, and the backlog was building. It is important to note that the VA had made a commitment to contract C&P exams in Connecticut to LHI [Logistics Health Incorporated] and one other agency. The use of ACE enabled the backlog to be worn down and decisions rendered in cases where in-person exams would not have been possible for nearly a year. That is commendable.*”

Another American Legion service officer in New York reported that, “*ACE exams are extremely helpful in obtaining benefits that veterans deserve and need.*” He had been assisting a Vietnam War veteran suffering from the symptoms of Parkinson’s disease due to Agent Orange exposure. In place of ordering an in-person exam at the VA medical facility, the C&P claims adjudicator used an ACE exam to make a favorable determination based on the evidence in the veteran’s medical record.

A Legion service officer in Minnesota reported that ACE exams “... *can be great in certain instances*” and gave the example of an 85-year-old veteran waiting for his disability claim to be

⁴ [“Disability Claims Initiative Reduces Processing Time, Adds Convenience,”](#) VA press release, Jan. 31, 2013.

⁵ [“Enhanced Strategy Needed to Reduce Disability Exam Inventory Due to the Pandemic and Errors Related to Canceled Exams,”](#) VA Office of Inspector General, November 19, 2020.

adjudicated. With the shutdown of the National Personnel Records Center, the VBA adjudicators *“have not worked his claim. It is literally 306 days pending. The VA could have done an ACE exam on his tinnitus. Unfortunately, the veteran died a month ago with nothing being decided.”*

Too many veterans wait too long for their disability claims to be decided. Increased use of ACE exams can shorten the wait for many of them. Nevertheless, we must be assured that claims adjudicators are adequately trained for the task at hand. Adjudications based on ACE must not become, as one of our service officers put it, *“an easy denial for complex issues.”*

Obviously, ACE exams are not appropriate for all types of disability claims. If a VA contractor finds insufficient material to complete a DBQ, then an in-person C&P exam may be needed. The VBA has determined that some conditions are not appropriate for an ACE exam, including traumatic brain injury and mental disorders. One of our service officers in Washington state said that the use of ACE exams sometimes *“doesn’t go well with our veterans, especially veterans dealing with depression and PTSD.”* However, many veterans' disabilities can be evaluated successfully with ACE, and the Legion has called upon VA to make greater use of them as a means to reduce the number of backlogged C&P examinations.⁶

The Critical Role of DBQs

The Disability Benefits Questionnaire is an integral component of the ACE exam that requires careful evaluation of clinical evidence, and often calls for an interview with the veteran. These DBQs are critical components in the adjudication process, whether VA contractors or private practitioners complete them. An American Legion service officer in Missouri reported that she tries to use a DBQ *“... whenever possible. In my experience, adjudicators do not use private records to rate. They will set up a C&P exam even when they know it will cause delays. Sometimes, it seems like they are developing potential negative evidence. However, using the DBQ, VA is more inclined to rate the claims.”*

The American Legion recognized the critical role of DBQs when it called upon VA to restore public access to them on its website.⁷ These standardized forms must be made available to private practitioners for the submission of medical opinions and other clinical evidence in a format that is familiar to claims adjudicators. The importance of DBQs is further elevated in ACE examination – a poorly written one, without proper analysis or a detailed rationale – may result in the unfair denial of a veteran’s benefits.⁸

VBA must ensure that high-quality medical opinions and other documents are written by VA contractors. One of our Legion service officers in Wisconsin has reported that C&P examiners are *“... not always thorough with their notes, and this could impact the veteran's claims in a negative way. We try to review medical records properly to make sure we protect the veteran*

⁶ [“Resolution No. 10: Increased Use of Acceptable Clinical Evidence \(ACE\) Examinations as an Alternative to Compensation and Pension \(C&P\) Examinations,”](#) National Executive Committee of The American Legion, May 5-6, 2021.

⁷ [Resolution No. 7: Restore Disability Benefits Questionnaires \(DBQ\) to Department of Veterans Affairs \(VA\) Website,](#) National Executive Committee of The American Legion, Oct. 14-15, 2020.

⁸ See [Nieves-Rodriguez v. Peake](#), 22 Vet.App. 295 (2008).

before we submit. We have all too often had doctors who will tell veterans something but not note it in the system or enter something entirely opposite. This may be a miscommunication issue with the veteran, but it is a reality.... We also try to make sure the veteran's doctor understands how important their annotations are to make sure the claim is processed properly."

By ensuring that a highly qualified cadre of adjudicators are evaluating ACE exams with adequate DBQs, The American Legion sees no reason why such claims cannot become more prevalent in the VBA system. Nevertheless, adjudicators need to be thorough in their reviews. If the clinical evidence for a claim is not acceptable, then the veteran must receive a new examination.

Conclusion

While the ACE process is no magic elixir for curing the backlog once and for all, it is less complicated, requires less time, and allows claims adjudicators to determine whether a claim requires additional evidence from in-person C&P exams.

VA's Office of Inspector General (OIG) has seen the value of the ACE process in helping veterans during the pandemic. The OIG concluded that if ACE works so effectively in a crisis time, it should continue to have widespread use.⁹ Making benefits more readily available to veterans who have earned them is of great importance to The American Legion. The current arrangement of having in-person C&P exams done by VA contractors entails quality issues that do not apply to the ACE process. The increased use of ACE exams may possibly result in a decreased need for VA-contracted examiners.

For America's rural veterans and for many of those living overseas, ACE exams offer a far more viable option than driving hours for a C&P exam that may be unnecessary in the first place. ACE exams could also provide a better option for veterans with claims for physical disabilities, but who suffer from mental disorders that make it difficult for them to leave their homes.

However, VBA must address the critical importance of well-trained claims adjudicators who know how to evaluate medical evidence, know when that evidence is sufficient to determine a claim, and know when the veteran requires an in-person examination. ACE exams can be a powerful weapon in VBA's arsenal to defeat the exam backlog; let us work together to ensure they are not used for the easy denial of complex issues.

The American Legion sees no significant down side to the increased use of ACE exams in combating the current backlog of C&P exams – as long as claims adjudicators and VA contractors are well trained, as long as DBQs are of professional quality, and as long as claims are evaluated properly.

We respectfully ask Congress to ensure, through its oversight, that the ACE process will be strengthened by properly trained medical examiners and claims adjudicators. The quality of DBQs submitted by VA contractors must be closely monitored and well documented by VA's Medical Disability Examination Office. Likewise, VA regional offices must report to VA's Central Office

⁹ ["Enhanced Strategy Needed to Reduce Disability Exam Inventory Due to the Pandemic and Errors Related to Canceled Exams,"](#) VA Office of Inspector General, November 19, 2020.

on the quality of adjudication for claims with ACE exams. These reports on the number and quality of ACE exams processed, and the outcomes of those claims, should be made available to the House and Senate Committees on Veterans' Affairs on a quarterly basis.

The American Legion evaluates the quality of ACE exam claims and their adjudication through our Regional Office Action Review (ROAR) program. Representatives travel to several VA regional offices, where they will evaluate the quality of work being performed by claims adjudicators. Particular focus is placed on claims submitted with ACE exams, the quality of DBQs that have been submitted as part of those exams, and the ratio of ACE to C&P exams. We prepare reports based on our findings and make them available to Congress, the White House, VA leadership, and the public. We owe it to our veterans community to carefully evaluate the role of ACE examinations in the disability claims process, and use them to the fullest advantage for our veterans.

Chairman Tester, Ranking Member Moran, and distinguished members of the committee, The American Legion, thank you for your leadership on this matter and for allowing us the opportunity to explain the position of our nearly two million members. For additional information regarding this testimony, please contact Mr. Advait Thampi at The American Legion's Legislative Division at (202) 861-2700 or athampi@legion.org.