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Report RL33323

*Veterans Affairs: Benefits for Service-Connected Disabilities*

Douglas Reid Weimer, Legislative Attorney

December 12, 2008

**Abstract.** Legislation passed in the First Session of the 110th Congress increased the 2008 monthly disability compensation payments (P.L. 110-111). Legislation passed in the Second Session of the 110th Congress increased the 2009 monthly disability compensation payments by providing veterans a cost-of-living (COLA) for their VA benefits equal to the COLA for Social Security benefits (5.8%) (P.L. 110-430). The 110th Congress considered additional legislation that may affect service-connected disabilities. One bill would change the manner in which disabled veterans could qualify to receive Social Security Disability Insurance (SSDI) benefits. Several bills were introduced to deal with the large number of claims pending at the VA and issues related to the receipt of disability benefits.

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# Veterans Affairs: Benefits for Service-Connected Disabilities

**Douglas Reid Weimer**  
Legislative Attorney

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## Summary

Congress provides various benefits to American veterans and their dependents through the United States Department of Veterans Affairs (VA). One of these benefits is *disability compensation*, which is a monthly cash benefit program for veterans currently impaired from past service-connected activities.

A claim for disability compensation is initially analyzed by the VA at the local level to determine: 1) whether the claimant is considered a “veteran” (eligible for benefits); 2) whether the veteran qualifies for disability compensation (entitled to benefits); 3) the extent of the impairment and the “rate” of the disability; and 4) the effective date for the compensation.

Three requirements to qualify for disability compensation are: 1) medical diagnosis of the current impairment; 2) evidence of an in-service occurrence or an aggravation of the disease or injury; and 3) medical proof of a connection between the in-service incident or aggravation of an injury or illness and the current disability. The requisite standard of proof and certain medical presumptions are set by statute. The VA is required to provide assistance to the veteran in his/her case preparation by providing records and medical examinations. Special rules have been established for certain specific situations involving combat veterans, prisoners of war, and veterans exposed to Agent Orange.

If the veteran is found eligible for disability compensation, the VA then uses the Schedule for Rating Disabilities (SRD) to set the amount of earnings impairment on a percentage basis; the higher the percentage, the greater the compensation will be. Certain complications arise with the use of the rating system. A veteran’s rating may be increased or decreased over time—depending on his/her medical condition. Rating decisions may be appealed administratively.

Legislation passed in the First Session of the 110<sup>th</sup> Congress increased the 2008 monthly disability compensation payments (P.L. 110-111). Legislation passed in the Second Session of the 110<sup>th</sup> Congress increased the 2009 monthly disability compensation payments by providing veterans a cost-of-living (COLA) for their VA benefits equal to the COLA for Social Security benefits (5.8%) (P.L. 110-430). The 110<sup>th</sup> Congress considered additional legislation that may affect service-connected disabilities. One bill would change the manner in which disabled veterans could qualify to receive Social Security Disability Insurance (SSDI) benefits. Several bills were introduced to deal with the large number of claims pending at the VA and issues related to the receipt of disability benefits.

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# Introduction

## Veterans' Disability Programs

Congress, through the United States Department of Veterans Affairs (VA), provides a wide variety of services and benefits to veterans and to certain members of their families.<sup>1</sup>

Two disability programs are administered by the VA. These programs pay monthly cash benefits to certain disabled veterans.<sup>2</sup> *Disability compensation*, the focus of this report, provides a monthly cash benefit if the veteran is at least 10% disabled as a consequence of his/her military service—which is considered to be a *service-connected disability*.<sup>3</sup> A veteran applying for service-connected disability compensation does not need to be totally disabled, have low income, or wartime military service. In contrast, a *disability pension* may be paid to a *wartime* veteran with limited income, who is no longer able to work, or is at least age 65.<sup>4</sup> A disability pension is not related to a service-connected injury or medical condition and takes into account the material needs of the veteran; it is a “needs-based” pension.<sup>5</sup>

## The “Local Determination”

The VA analyzes each veteran’s claim for disability compensation at the VA regional office closest to the veteran’s residence, called the “local determination.” This determination involves a four-step adjudication process of the veteran’s claim.

First, the VA determines the claimant’s basic eligibility to receive VA benefits. A determination is made as to whether the claimant was discharged or separated under other than dishonorable conditions, whether the claimant had “active service,” and whether the claimant’s condition is based upon the veteran’s willful misconduct.<sup>6</sup>

Second, if the claimant is found eligible for benefits,<sup>7</sup> the VA then determines whether the veteran qualifies for in-service disability compensation.

Third, if the VA determines that the veteran is entitled to disability compensation, the VA then evaluates the extent of the disability and makes a determination of the percentage of the disability

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<sup>1</sup> See generally *Federal Benefits for Veterans and Dependents*, published by the Departments of Veterans Affairs (2008 edition). (Hereinafter cited as “*Federal Benefits*.”) See <http://www1.va.gov/opa/vadocs/fedben.pdf> for the publication online. See CRS Report RL33113, *Veterans Affairs: Basic Eligibility for Disability Benefit Programs*, by Douglas Reid Weimer, regarding the fundamental requirements for disability benefits.

<sup>2</sup> *Id.*

<sup>3</sup> The severity of the veteran’s disability is evaluated by the VA and a determination is made as to what percentage of employment capacity is impaired. See discussion below.

<sup>4</sup> See CRS Report RL33113, *Veterans Affairs: Basic Eligibility for Disability Benefit Programs*, at 2 for a discussion of the disability pension.

<sup>5</sup> For further discussion of a disability pension or a non-service-connected pension, see CRS Report RL33113, *Veterans Affairs: Basic Eligibility for Disability Benefit Programs*, at 10-11.

<sup>6</sup> See CRS Report RL33113, *Veterans Affairs: Basic Eligibility for Disability Benefit Programs*, at 3-4 in general. For a discussion of “active service” see p. 6 and for a discussion of “willful misconduct” see pp. 8-9.

<sup>7</sup> Hence, the claimant becomes a “veteran” for purposes of benefits.

based upon the “Schedule for Rating Disabilities,” which is sometimes referred to as the “SRD” and/or the “VASRD.”<sup>8</sup> Findings adverse to the interests of the veteran may be appealed administratively.

Fourth, the VA establishes the effective date for the award.

## Requirements for Disability Compensation<sup>9</sup>

The purpose of disability compensation is to assist currently disabled veterans whose injury is connected to military service, and to that end, a veteran must meet three basic criteria to the VA’s satisfaction:<sup>10</sup>

- *One:* A recent medical diagnosis of a *current* impairment, disability, or disease.
- *Two:* Medical or, on occasion, lay evidence of an *in-service* occurrence or aggravation of the disease or injury.
- *Three:* Medical proof of a *connection* between the current disability and the in-service occurrence or aggravation of an injury or illness.

Each of these requirements is examined below.

## Medical Evidence of the Current Impairment or Disability

Disability compensation is available only to veterans with current disabilities.<sup>11</sup> Although a veteran may have been ill or sustained an injury while in service, the mere fact that this occurred is not compensable.

To provide evidence of the current medical problem, the veteran may submit medical records of the current diagnosis and/or treatment. Letters from physicians may be added to the record. Generally speaking, lay evidence of a medical condition is not sufficient. The VA has certain duties to assist veterans in the application process.<sup>12</sup> The VA must assist by providing the veteran with the appropriate records.<sup>13</sup> Usually, the VA is required to provide veterans with a medical exam in order to diagnose a current medical condition.<sup>14</sup> However, in certain circumstances, the VA may not be required to provide such an examination or assistance to the veteran.<sup>15</sup> In addition,

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<sup>8</sup> 38 U.S.C. § 1155; 38 C.F.R. § 4. See discussion below.

<sup>9</sup> See Barton F. Stichman et al., *Veterans Benefits Manual* at § 3.1.5. (Hereinafter cited as “*Veterans Benefits Manual*.”)

<sup>10</sup> For the purposes of this report, it is assumed that the claimant/applicant has met the very basic eligibility requirements for VA benefits. The claimant/applicant will be referred to as the “veteran” for the remainder of this report.

<sup>11</sup> 38 U.S.C. §§ 1110, 1131. These provisions deal with the basic entitlement for disability compensation.

<sup>12</sup> 38 U.S.C. § 5103A.

<sup>13</sup> 38 U.S.C. §§ 5103A(b),(c).

<sup>14</sup> 38 U.S.C. § 5103A(d).

<sup>15</sup> 38 U.S.C. § 5103A(a)(2).

the VA must advise veterans of incomplete applications<sup>16</sup> and the evidence needed to evaluate the veteran's claim.<sup>17</sup>

## Evidence of an In-Service Occurrence or Aggravation of the Disease or Injury

The second requirement for disability compensation is that there is medical or, under certain circumstances, lay evidence of an in-service occurrence or aggravation of a disease or injury. The in-service requirement is construed broadly. A disability incident or onset of disability is not required to be related to the veteran's military responsibilities and is covered even if it occurred during leave.<sup>18</sup> Further, the evidence submitted on the record must only demonstrate that it is as likely as not that there was an in-service aggravation or occurrence of a disease or injury. When there is nearly equal positive and negative evidence regarding a material issue, the Secretary of Veterans Affairs is required to give the benefit of the doubt to the veteran.<sup>19</sup>

The veteran must submit corroborating evidence of the incident and a statement describing the occurrence, disease, or injury in detail, along with the circumstances surrounding the event.<sup>20</sup> The type of evidence that the veteran must submit may depend upon the type of injury or disease which is being connected to the time of service. For example, a veteran who sustained a fall while in-service might produce evidence of medical treatment for the fall at the time of its occurrence and evidence from military personnel who witnessed the fall.

## Medical Proof of a Connection Between the In-Service Incident or Aggravation of an Injury/Illness and the Current Disability

This third element requires a *link* between the current injury or illness (requirement 1) and that the disease, injury, or event happened during a period of military service (requirement 2). This requirement is sometimes known as service-connected, the "service connection," or the nexus requirement.

Statutes and regulations require proof of one of five types of connections. *One*: there is a direct connection between the current disability and an incident that happened during the period of military service.<sup>21</sup> *Two*: the current medical condition existed prior to service but was exacerbated during service.<sup>22</sup> *Three*: the current medical problem did not appear during military service, but is

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<sup>16</sup> 38 U.S.C. § 5102(b).

<sup>17</sup> 38 U.S.C. § 5103(a).

<sup>18</sup> For example, a veteran may receive compensation for a medical condition that resulted from a sports injury incurred during in-service time. See *Veterans Benefit Manual* at §3.1.1.1.

<sup>19</sup> 38 U.S.C. § 5107(b).

<sup>20</sup> 38 C.F.R. § 3.303.

<sup>21</sup> 38 C.F.R. §§ 3.303(a), 3.304, 3.305. See also 38 U.S.C. § 1154. In determining whether the current condition relates to the in-service problem, the VA determines whether the problem is *acute* or *chronic*. An acute problem is considered to be a problem of relatively short duration. A chronic condition is of lengthy duration and may return.

<sup>22</sup> 38 U.S.C. § 1153; 38 C.F.R. § 3.306(a). If the disability existed prior to service, the VA must ascertain whether there was an *increase in the disability during service*. The preexisting problem will not be considered to be aggravated by (continued...)

presumed to have begun or to be connected with something that occurred during service, either by statute or by VA regulation.<sup>23</sup> *Four*: the present problem is the result of a primary medical condition, and that condition is connected to a period of military service.<sup>24</sup> *Five*: the condition is the result of an injury caused by VA health service, VA training/rehabilitation services, or by participation in a VA sponsored work therapy program.<sup>25</sup>

To establish this connection, the claim must contain adequate medical evidence.<sup>26</sup> What this signifies is that for the in-service connection to be approved, the veteran must have medical proof that the disease, injury, or event which occurred during service *actually caused* the veteran's current disability.

## The VA's Obligations in the Preparation/Presentation of the Veteran's Case and Certain Presumptions

The VA is required by law to use certain standards in reviewing a veteran's claims, and the VA has certain statutory obligations in the preparation of the veteran's case. In addition, statute and regulations provide for certain presumptions of disability as a result of certain occurrences. These standards, requirements, and presumptions are summarized below.

### Standard of Proof

As previously explained, in order to receive disability benefits, evidence is required to prove a connection between an in-service incident and a current disability, but in assessing evidence on these elements, the veteran is to be given the "benefit of the doubt."<sup>27</sup> The statute provides that "When there is an approximate balance of positive and negative evidence regarding any issue material to the determination of a matter, the Secretary shall give the benefit of the doubt to the claimant."<sup>28</sup> Regulations provide that when reasonable doubt arises, such doubt will be resolved in favor of the claimant.<sup>29</sup> Hence, in order to satisfy this element, the submitted medical evidence generally needs to show that it is as likely as not that there is a connection between the in-service injury, occurrence, or illness and the current disability.

(...continued)

service if the VA determines that the exacerbation resulted from the natural progression of the disease.

<sup>23</sup> 38 U.S.C. §§ 1112, 1116, 1133; 38 C.F.R. §§ 3.307-3.309; 38 C.F.R. § 3.313(b). If the disability claimed is a disease which was not diagnosed or recorded on the veteran's service record, the VA is required to ascertain whether the *incubation time* for the disease could have started during in-service time (38 C.F.R. § 3.03(d)).

<sup>24</sup> 38 C.F.R. § 3.310(a). If the disability claimed cannot be determined to be in-service, either directly or by exacerbation, the VA will then decide whether the problem may be *service-connected on a secondary basis*. This reasoning is based on the theory that it was proximately caused by a service-connected condition. For instance, a primary disease is contracted in-service. A related, secondary disease develops as a result of the primary disease.

<sup>25</sup> 38 U.S.C. § 1151.

<sup>26</sup> 38 U.S.C. § 5107.

<sup>27</sup> 38 U.S.C. § 5107(b).

<sup>28</sup> *Id.*

<sup>29</sup> 38 C.F.R. § 3.102.



## Assistance in Case Preparation

The VA has a responsibility to assist the veteran in developing a claim. Among other things, the VA is required to advise the veteran of the type of evidence that must be submitted to substantiate the claim.<sup>30</sup>

The VA also must make service and medical records available to veterans for the preparation of their cases.<sup>31</sup> Such records are often crucial in proving the veteran's claim. In many instances, the VA is required to provide veterans with a *medical examination* in order to diagnose the current medical condition.<sup>32</sup> However, under certain circumstances the VA may not be required to provide assistance to the veteran.<sup>33</sup>

## Certain Presumptions

In its analysis of certain claims, the VA is required by statute and/or regulation to make certain presumptions.

### Presumption of Medical Soundness

In evaluating a veteran's claim, the VA generally presumes that the veteran entered the service in sound medical condition.<sup>34</sup> This may assist the veteran in proving a claim by making it difficult for the VA to claim that the condition or disease existed prior to service. However, if the medical impairment was noted at the time of entry into service, the veteran may have to prove that the condition was exacerbated in-service. If the VA is able to prove by "clear and unmistakable evidence" that the disease or injury was in existence prior to service, and that it was not worsened during service, the veteran's claim will be denied.

### Special Rules for Certain In-Service Occurrences

Special rules require the VA to consider a service-connected problem by presumption. For example, certain diseases associated with exposure to Agent Orange will be presumed to be service-related in the case of Vietnam veterans.<sup>35</sup>

A similar regulation holds that veterans who were held prisoners of war or who served in combat can be presumed to have suffered traumatic, stressful events during their military service.<sup>36</sup> Similarly, special rules apply to combat veterans in proving an in-service injury, or other incident.<sup>37</sup> If a combat veteran claims to have suffered a disease, injury, or other event during

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<sup>30</sup> 38 U.S.C. § 5103(a).

<sup>31</sup> 38 U.S.C. §§ 5103A(b)(c).

<sup>32</sup> 38 U.S.C. § 5103A(d).

<sup>33</sup> 38 U.S.C. § 5103A(a)(2).

<sup>34</sup> 38 U.S.C. § 1111.

<sup>35</sup> 38 C.F.R. § 3.307(a)(6)(iii).

<sup>36</sup> 38 C.F.R. § 3.304(f).

<sup>37</sup> 38 U.S.C. § 1154(b); 38 C.F.R. § 3.304(d)(f).

combat, the VA will usually accept that statement as fact. This is the case even if there are no service records to substantiate the claim.

## The VA Rating System

Congress has established by statute a rating system to categorize a veteran's degree of disability for in-service injuries.<sup>38</sup> This system is implemented by the VA through a series of complex regulations and procedures.

After the VA determines that a disability is service-connected, the VA regional office goes through a review process (the "rating activity") to determine the disability rating (on a percentage basis). As used by the VA, the term "disability" is defined as "the average impairment in earning capacity" that results from diseases, injuries, or their resultant aftermath.<sup>39</sup>

### Schedule for Rating Disabilities (SRD or VASRD)

By authority of Congress, the VA set up the Schedule for Rating Disabilities ("SRD" or "VASRD"), which rates various disabilities on a percentage basis.<sup>40</sup> The statute provides for ten grades of disability, and the higher the disability determination, the higher is the monthly compensation that the veteran receives.<sup>41</sup> The VA determines the disability level for an eligible veteran, and Congress sets the compensation rates for veterans based on ratings.<sup>42</sup>

Again, in making individual determinations, the VA and the Board of Veterans' Appeals (BVA) apply the various ratings of the SRD.<sup>43</sup> The SRD is detailed: various sections deal with injuries or diseases that impact particular body functions/parts, including the musculoskeletal system, eyes, and other functions such as hearing, infectious diseases, respiratory system, cardiovascular system, digestive system, genitourinary system, gynecological conditions, and other functions.<sup>44</sup> Each of these sections of the SRD (dealing with a particular body part or function) has a series of medical diagnoses with a numerical diagnostic code (dc) that breaks down percentages of disability based upon the severity of the disability.<sup>45</sup> Each degree of disability under each dc has a description of the symptoms that the claimant veteran must have in order to qualify for that rating. The disability degree increases with the increase in the severity of the symptoms.

<sup>38</sup> 38 U.S.C. § 1155.

<sup>39</sup> 38 C.F.R. § 4.1.

<sup>40</sup> 38 U.S.C. § 1155.

<sup>41</sup> 10% through 100%.

<sup>42</sup> The current monthly rates, effective on December 1, 2008, are as follows: an unmarried veteran without dependents and with a 10% disability receives \$123 per month. The rates increase to a 100% disability payment of \$2,673 per month (for an unmarried veteran without dependents). For rate tables and a compensation calculator, see <http://www.vba.va.gov/bln/21/rates/comp01.htm>. *The payment rates are not automatically adjusted for inflation, and are only increased if Congress passes enabling legislation.* Congress usually grants an increase based on the consumer price index or the cost-of-living formula used to determine the Social Security old age increase. The 2009 rates were set by P.L. 110-430, 110<sup>th</sup> Cong., 2d Sess. (September 24, 2008), the Veterans' Compensation Cost-of-Living Adjustment Act of 2008.

<sup>43</sup> 38 C.F.R. § 4.1.

<sup>44</sup> For example see 38 C.F.R. §§ 4.40 to 4.73 for the musculoskeletal system; 38 C.F.R. §§ 4.75 to 4.84a for the eyes.

<sup>45</sup> See 38 C.F.R. § 4.84a for an example of the ratings and diagnostic codes chart for impairment of vision.

## Application of the Rating System<sup>46</sup>

Applying this rating system, the VA examines the veteran's medical records to determine the medical diagnosis for the veteran's service-connected disability. The VA then finds the applicable diagnostic code for the disability and finds the degree of disability that is appropriate to the symptoms and diagnosis of the veteran's condition. If a rating falls between two ratings, and the symptoms are closer to the higher rating, then the higher rating will be selected.<sup>47</sup> In making its determination, the VA examines all of the available evidence, including service records, lay statements, and medical records and other evidence.<sup>48</sup>

## Complications in the Use of the Rating System

When the VA applies the diagnostic code(s) to veterans' claims, a number of variables come into play, some of which may be quite complex. And while every rating has unique circumstances, VA ratings in similar cases may not always seem consistent. Having to make fine distinctions within an intricate rating system based on a reading of a veteran's symptoms inevitably leads to some claims that a rating is "wrong" or "underrated."

Another potential complication in the rating process is that a medical condition may be able to be rated under more than one diagnostic code, sometimes to the detriment of the veteran. In addition, not all disabilities and their symptoms and complications are listed on the rating chart, in which case an analogous condition may be used for the rating.<sup>49</sup>

A further complication in the rating system occurs when a veteran has two or more service-connected disabilities. In such a circumstance, the overall percentage of disability is determined by combining the individual ratings, but *not by adding them together*. To calculate the appropriate combined rating, the VA considers each impairment in the order of its severity. Direction on how to make these determinations is contained in the "Combined Rating Table" in the VA regulations.<sup>50</sup>

## Changes in Veterans' Ratings

Should the severity of the service-connected disability increase over time, the veteran may apply for an increase in the rated percentage of disability.<sup>51</sup> Similarly, should the condition improve, the ratings percentage may be decreased, and the monthly payments would decrease.

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<sup>46</sup> See CRS Report RL33991, *Disability Evaluation of Military Servicemembers*, by Christine Scott, Sidath Viranga Panangala, and Charles A. Henning.

<sup>47</sup> 38 C.F.R. § 4.7.

<sup>48</sup> 38 C.F.R. § 3.103(d).

<sup>49</sup> 38 C.F.R. § 4.20. However, if a veteran's disability is so extraordinary or unusual that an analogy cannot be made through use of the rating charts, an "extraschedular rating" for a veteran may be made (38 C.F.R. § 3.321(b)).

<sup>50</sup> 38 U.S.C. § 1157; 38 C.F.R. § 4.25.

<sup>51</sup> See "Compensation and Pension Benefits Page" at VA website; *A Summary of VA Benefits: Putting Veterans First*, VA Pamphlet 21-00-1 (April 2008); see also <http://www.va.gov> (click on "Benefits," and then go to "Compensation and Pension Benefits Page").

## Special Monthly Compensation (SMC)

Veterans with severe disabilities may be entitled to special monthly compensation (SMC) which provides compensation payments at a rate higher than the 100% rate.<sup>52</sup> In addition to the SMC, certain veterans with severe disabilities that require daily assistance or regular health services may be eligible for extra compensation.<sup>53</sup>

## Zero Percent Evaluation

If the degree of disability from a service-connected incident does not impair earning capacity, a veteran may receive a 0% rating.<sup>54</sup> However, even a noncompensable evaluation under certain circumstances may entitle the veteran to preferences in federal or state employment and VA health care. A noncompensable evaluation may also be used to document a medical condition if it subsequently worsens.

## Periodic Examinations

Following the award of compensation benefits, the VA may require periodic examinations to determine whether the condition is constant in its severity and whether continued payment of disability compensation is warranted.<sup>55</sup> The VA is authorized to reexamine veterans receiving compensation benefits at any time. However, under certain circumstances—for example, if the condition is static—the VA may not schedule review examinations.

## Appeals from Ratings

Some veterans may not be satisfied with their disability rating and may wish to appeal the determination. Such an appeal is first undertaken at the local VA level and may eventually proceed to the Court of Veterans Claims (“Court”).<sup>56</sup> The Court examines whether the VA considered all of the appropriate facts and set forth a satisfactory explanation for its choice and application of the diagnostic code.

## Evaluation of the Rating System

A 2005 Government Accountability Office (GAO) study, *Veterans’ Disability Benefits—Claims Processing Challenges and Opportunities for Improvements*,<sup>57</sup> evaluated certain aspects of the disability compensation process. GAO noted that the VA provided \$30 billion in cash disability

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<sup>52</sup> 38 U.S.C. § 1114(k); 38 C.F.R. § 3.350. Such disabilities may involve the loss of use of a hand or foot and other serious impairments.

<sup>53</sup> 38 U.S.C. § 1114(r)(2); 38 C.F.R. § 3.352.

<sup>54</sup> Many conditions listed within the ratings tables are rated as 0. See also 38 C.F.R. § 4.31.

<sup>55</sup> 38 C.F.R. § 3.327(a).

<sup>56</sup> See CRS Report RS22561, *Veterans Affairs: The U.S. Court of Appeals for Veterans Claims - Judicial Review of VA Decision Making*, by Douglas Reid Weimer.

<sup>57</sup> GAO-06-283T, Testimony before the Committee on Veterans’ Affairs, House of Representatives; Statement for the Record by Cynthia A. Bascetta, Director, Education, Workforce, and Income Security Issues (GAO) (December 7, 2005).

benefits to more than 3.4 million veterans and their survivors in FY2004.<sup>58</sup> GAO found that the VA has continuing challenges in the disability compensation process, including large numbers of pending claims and long processing times.<sup>59</sup>

Another issue that GAO highlighted is the lack of consistency and accuracy of rating decisions at and among the VA's 57 regional offices.<sup>60</sup> Consequently, veterans with similar disabilities may receive different evaluations from the different VA regional offices, and hence may receive significantly different compensation. GAO also noted that the VA's evaluative process has not kept pace with recent developments in medical technology.<sup>61</sup>

GAO uncovered another issue—that more recently discharged veterans with severe injuries would appear to favor a lump sum compensation payment, as opposed to monthly compensation payments over an extended period of time.<sup>62</sup>

## Recent and Proposed Legislation<sup>63</sup>

### Veterans' COLA (Cost-of-Living Adjustment)

The veterans' COLA is not automatic. Congress typically has passed legislation annually to provide a COLA in veterans disability compensation equal to the COLA automatically provided under permanent law to recipients of Social Security disability. The Veterans' Compensation Cost-of-Living Adjustment Act of 2008<sup>64</sup> increased, effective December 1, 2008, the rates (dollar amounts) of veterans' disability compensation (and also increased compensation for dependents, the clothing allowance for certain disabled veterans, and the dependency and indemnity compensation for surviving spouses and children).<sup>65</sup>

Three bills were introduced in the 110<sup>th</sup> Congress that would create an automatic veterans' COLA based on the Social Security adjustment: S. 161 (sponsored by Senator John Thune),<sup>66</sup> H.R. 402 (sponsored by Representative Joe Knollenberg),<sup>67</sup> and S. 1315 (sponsored by Senator Daniel K. Akaka).<sup>68</sup> Although not enacted in the 110<sup>th</sup> Congress, this legislation is still relevant and will likely be reintroduced in the 111<sup>th</sup> Congress.

<sup>58</sup> *Id.* at 1.

<sup>59</sup> *Id.* at 2, 4-6.

<sup>60</sup> *Id.* at 5-7.

<sup>61</sup> *Id.* at 8-9.

<sup>62</sup> *Id.* at 9-10.

<sup>63</sup> See CRS Report RL33985, *Veterans' Benefits: Issues in the 110th Congress*, by Carol D. Davis et al.

<sup>64</sup> P.L. 110-430, 110<sup>th</sup> Cong., 2d Sess. (September 24, 2008).

<sup>65</sup> This law amended 38 U.S.C. § 1114 and established increased monthly payments.

<sup>66</sup> S. 161, 110<sup>th</sup> Cong., 1<sup>st</sup> Sess. (2007). The bill was introduced and was referred to the Senate Committee on Veterans' Affairs on January 4, 2007.

<sup>67</sup> H.R. 402, 110<sup>th</sup> Cong., 1<sup>st</sup> Sess. (2007). The bill was introduced on January 11, 2007, and was referred to the House Subcommittee on Disability Assistance and Memorial Affairs on March 2, 2007.

<sup>68</sup> S. 1315, 110<sup>th</sup> Cong., 1<sup>st</sup> Sess. (2007). The bill was introduced on May 7, 2007, and passed the Senate and agreed to in the House. On September 23, 2008, a message on House action was received in the Senate.

## Social Security Disability Insurance (SSDI) Benefits

While not enacted in the 110<sup>th</sup> Congress, legislation dealing with the way in which disabled veterans could qualify to receive SSDI benefits will probably be of interest in the 111<sup>th</sup> Congress and may be reintroduced.

H.R. 2943 (introduced by Representative John P. Sarbanes) would change the manner in which disabled veterans could qualify to receive SSDI benefits.<sup>69</sup> If enacted, the bill would permit veterans with service-connected disabilities that are rated and certified by the VA as totally disabled to be eligible for SSDI benefits without having to be evaluated by the Social Security Administration (SSA) if they meet the other requirements for SSDI benefits. At the present time, SSA evaluates all applicants (veterans and non-veterans) to determine their eligibility for SSDI benefits.<sup>70</sup> A companion bill, S. 2872 (introduced by Senator Sherrod Brown) would make similar changes in the manner in which disabled veterans could qualify to receive SSDI benefits.<sup>71</sup>

## Veterans' Claims Pending and Related Issues

Presently, there is a large number of pending veterans' claims before the VA. According to the VA, which tracks these figures, for the week ended November 29, 2008, there were 388,574 rating cases pending.<sup>72</sup> This compares to a pending number of 403,484 rating cases from the same time period in 2007.<sup>73</sup> Concern over this large number of pending claims has been expressed by legislators and veterans' groups. As there remains a large number of rating cases pending, the 111<sup>th</sup> Congress will likely be interested in reducing this number and legislation will likely be introduced in an attempt to reduce the number of pending rating cases.

In response to this large number of pending claims, several bills were introduced in the 110<sup>th</sup> Congress that would impact disability determinations by the VA. The proposed Wounded Warrior Assistance Act of 2007 was considered in the House, H.R. 1538 (introduced by Representative Ike Skelton), and in the Senate, S. 1283 (introduced by Senator Mark Pryor).<sup>74</sup> Both bills address disability evaluations, require a study by the DOD and VA concerning their evaluation systems, and require consideration of the possibility of combining the two systems.

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<sup>69</sup> H.R. 2943, 110<sup>th</sup> Cong., 1<sup>st</sup> Sess. (2007). The bill was introduced and was referred to the House Committee on Ways and Means on June 28, 2007.

<sup>70</sup> See CRS Report RL32279, *Primer on Disability Benefits: Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI)*, by Scott Szymendera.

<sup>71</sup> S. 2872, 110<sup>th</sup> Cong., 2d Sess. (2008). The bill was introduced and referred to the Senate Committee on Finance on April 16, 2008.

<sup>72</sup> The VA breaks these figures down in very detailed "workload reports." For more information, go to the VA website, <http://www.va.gov>, and search under "workload reports." Then go to "2008 Monday Morning Workload Report" and access for the current statistics.

<sup>73</sup> *Id.*

<sup>74</sup> H.R. 1538, 110<sup>th</sup> Cong., 1<sup>st</sup> Sess. (2007). The bill was introduced on March 15, 2007, passed the House on March 28, 2007, and passed the Senate with an amendment by Unanimous Consent on July 25, 2007. The Senate ordered the measure printed as passed on September 5, 2007.

S. 1283, 110<sup>th</sup> Cong., 1<sup>st</sup> Sess. (2007). The bill was introduced and was referred to the Senate Committee on Armed Services on May 3, 2007.

H.R. 653 (sponsored by Representative Thomas M. Reynolds) would have the Secretary of Veterans Affairs accept that an injury or disease is service-connected (if there is no clear and convincing proof to the contrary), based upon the sworn affidavit of a veteran who served in combat on or before July 27, 1953 (prior to or during the Korean War).<sup>75</sup>

H.R. 797 (sponsored by Representative Tammy Baldwin), which was enacted into law, expands disability compensation for veterans who are visually impaired in both eyes by using a standard definition of blindness used by other federal agencies.<sup>76</sup>

H.R. 1435 (sponsored by Representative Joe Baca) would direct the VA to conduct a pilot program with County Veterans Service Officers (CVSOs) in certain states.<sup>77</sup> Certain claims requiring further development would be referred to the CVSOs. The CVSOs would be required to act as claimant advocates in developing such claims and would have access to client information contained in the VA's Benefits Delivery Network.

H.R. 1444 (sponsored by Representative John Hall), although not specifically addressing the backlog, would provide some benefits for those veterans awaiting their rating/appeal.<sup>78</sup> The bill would require the Secretary of the VA to pay an interim benefit of \$500 per month when a claim for veterans' benefits is remanded (referred back) by either the U.S. Court of Appeals for Veterans Claims or the Board of Veterans' Appeals, and the Secretary does not make a decision on the matter within 180 days of the date of the remand.

H.R. 1490 (sponsored by Representative Joe Donnelly) would create a presumption of service-connectedness in claims for service-connected benefits unless the Secretary of the VA determines that there is positive evidence to the contrary.<sup>79</sup> The bill would require the claimant to support the claim with proof of service in a conflict referred to in the claim, as well as a brief description of the nature, including the service connection, of the disability or claim. The Secretary would be required to redeploy, for the purpose of assisting veterans applying for benefits, those employees who are no longer needed to evaluate claims due to this presumption.

H.R. 1538 (sponsored by Representative Ike Skelton) deals primarily with improving the management of medical care, personnel actions, and quality of life issues for members of the Armed Forces.<sup>80</sup> The bill addresses disability evaluations, requires a study by DOD and the VA concerning their individual evaluation systems, and requires consideration of the possibility of combining the two systems. The bill would also streamline record keeping and the transfer of records from DOD to the VA. Some of the bill's provisions are similar to those of S. 1283, discussed below.

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<sup>75</sup> H.R. 653, 110<sup>th</sup> Cong., 1<sup>st</sup> Sess. (2007). The bill was introduced and was referred to the Senate Committee on Armed Services on May 3, 2007.

<sup>76</sup> P.L. 110-157, 110<sup>th</sup> Cong., 1<sup>st</sup> Sess. (December 12, 2007).

<sup>77</sup> H.R. 1435, 110<sup>th</sup> Cong., 1<sup>st</sup> Sess. (2007). The bill was introduced on March 9, 2007, and the House Subcommittee on Disability Assistance and Memorial Affairs held hearings on April 17, 2007.

<sup>78</sup> H.R. 1444, 110<sup>th</sup> Cong., 1<sup>st</sup> Sess. (2007). The bill was introduced on March 9, 2007, and the House Subcommittee on Disability Assistance and Memorial Affairs held hearings on April 17, 2007.

<sup>79</sup> H.R. 1490, 110<sup>th</sup> Cong., 1<sup>st</sup> Sess. (2007). The bill was introduced on March 13, 2007, and the Subcommittee on Disability Assistance and Memorial Affairs held hearings on April 17, 2007.

<sup>80</sup> H.R. 1538, 110<sup>th</sup> Cong., 1<sup>st</sup> Sess. (2007). The bill was introduced on March 15, 2007, passed the House on March 28, 2007, and passed the Senate with an amendment by Unanimous Consent on July 25, 2007. A message on Senate action was sent to the House on July 26, 2007. On September 5, 2007, the Senate ordered the measure to be printed as passed.

H.R. 2257 (sponsored by Representative Peter Welch) would require the Secretary of the VA to increase the number of benefits claims representatives.<sup>81</sup> The bill would require that no fewer than two claims representatives be located at each “vet center”<sup>82</sup> to provide readjustment counseling and related mental health services.

H.R. 2855 (sponsored by Representative Ciro Rodriguez) would establish a Wounded Heroes Independent Review Board (“Board”) to review certain cases involving a member of the Armed Forces or a veteran who was severely injured on or after September 11, 2001, while on active duty.<sup>83</sup> Upon the request of a “Wounded Hero,” the Board would expeditiously review the decision or determination of the VA or other federal department or agency relating to the eligibility for or scope of benefits, including health care or vocational rehabilitation benefits. Following a review, the Board would render a written advisory opinion relating to such eligibility or provision of such care or benefits. The advisory opinion would be “considered as evidence” by the BVA and the CAVC in any case with respect to the “Wounded Hero.” An advisory opinion rendered by the Board would not be reviewed by any other official or by any court, whether by an action in the nature of mandamus or otherwise.

H.R. 3047 (sponsored by Representative Doug Lamborn) would direct the Secretary of the VA to establish a work credit system for evaluating regional offices of the Veterans Benefits Administration (VBA) regarding veterans’ claims processing.<sup>84</sup> The Secretary would be required to develop and maintain an electronic claims processing system for processing veterans’ disability compensation claims that utilizes medical and military service data to generate disability rating recommendations. The Secretary would also be required to maintain a regional office at which all such claims are exclusively processed electronically. The bill would direct the Secretary to contract with a private entity to evaluate the training and assessment programs for VBA employees.

H.R. 4084 (sponsored by Representative John Hall) would direct the Secretary of the VA to contract with the Institute of Medicine, or other appropriate entity, to conduct a study analyzing the extent to which the Department of Veterans Affairs schedule for rating disability accounts for, or should be amended to account, measure, and compensate for, loss of quality of life to veterans due to a disability resulting from a personal injury suffered, or disease contracted, in the line of duty.<sup>85</sup> The bill would also provide that if a veteran who is a claimant dies before completing the submission of a claim for benefits, the person who would receive any accrued benefits due to such veteran would be treated as the claimant for purposes of completing submission of the claim.

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<sup>81</sup> H.R. 2257, 110<sup>th</sup> Cong., 1<sup>st</sup> Sess. (2007). The bill was introduced on May 9, 2007, and was referred to the House Subcommittee on Disability Assistance and Memorial Affairs on May 11, 2007.

<sup>82</sup> These “centers” provide readjustment counseling and related mental health services to veterans (38 U.S.C. § 1712A(i)(1)).

<sup>83</sup> H.R. 2855, 110<sup>th</sup> Cong., 1<sup>st</sup> Sess. (2007). The bill was introduced on June 25, 2007, and was referred to the House Subcommittee on Military Personnel on July 25, 2007.

<sup>84</sup> H.R. 3047, 110<sup>th</sup> Cong., 1<sup>st</sup> Sess. (2007). The bill was introduced on July 16, 2007, and the House Subcommittee on Disability Assistance and Memorial Affairs held hearings on November 8, 2007.

<sup>85</sup> H.R. 4084, 110<sup>th</sup> Cong., 1<sup>st</sup> Sess. (2007). The bill was introduced on November 6, 2007, and the House Subcommittee on Disability Assistance and Memorial Affairs held hearings on November 8, 2007.



H.R. 5089 (sponsored by Representative John Barrow) would propose to reform the veterans' disability determination process by requiring the Secretary of Veterans Affairs to pay disability compensation to certain veterans based on the concurring diagnosis of two physicians.<sup>86</sup>

H.R. 5576 (sponsored by Representative Steve Buyer) would make various improvements to the claims processing system of the VA.<sup>87</sup> Among these improvements would be training for agents/attorneys representing veterans, quality control assessment for regional offices of the Veterans Benefits Administration (VBA), the electronic processing of claims, treatment of beneficiaries in the event of the death of the veteran before claim determination, evaluation of training and assessment programs for employees of the VBA, electronic monitoring of claim status, a pilot program permitting the submission of claims to any regional office of the VA, and other programs.

H.R. 5892 (sponsored by Representative John J. Hall) would amend title 38 of the U.S. Code to direct the Secretary of the VA to modernize the disability benefits claims processing system of the VA to ensure the accurate and timely delivery of compensation to veterans and their families and survivors. Various disability benefit issues are covered in the bill.<sup>88</sup>

S. 1283 (sponsored by Senator Mark Pryor) deals primarily with improving the management of medical care, personnel actions, and quality of life issues for members of the Armed Forces.<sup>89</sup> The bill addresses disability evaluations, requires a study by the DOD and the VA concerning their individual evaluation systems, and requires consideration of the possibility of combining the two systems. Some of the bill's provisions are similar to those of H.R. 1538, discussed above.

S. 1363 (sponsored by Senator Hillary Rodham Clinton), the proposed Bridging the Gap for Wounded Warriors Act, would improve health care for severely injured members and former members of the armed forces.<sup>90</sup> The bill would create a Department of Defense—Department of Veterans Affairs Office of Transition (“Office”).<sup>91</sup> Among the functions of this Office would be to “develop uniform standards, to be applicable across the military departments and to the Department of Veterans Affairs, for the rating of disabilities incurred or aggravated by members of the Armed Forces during service in the Armed Forces.”<sup>92</sup> The bill would also provide for the reform of the disability ratings system of the Department of Defense and the Department of Veterans Affairs.<sup>93</sup>

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<sup>86</sup> H.R. 5089, 110<sup>th</sup> Cong., 2d Sess. (2008). The bill was introduced and was referred to the House Subcommittee on Disability Assistance and Memorial Affairs on January 25, 2008.

<sup>87</sup> H.R. 5576, 110<sup>th</sup> Cong., 2<sup>nd</sup> Sess. (2008). The bill was introduced on March 11, 2008, and was referred to the House Subcommittee on Disability Assistance and Memorial Affairs on March 14, 2008.

<sup>88</sup> H.R. 5892, 110<sup>th</sup> Cong., 2d Sess. (2008). The bill was introduced and was referred to the House Committee on Veterans' Affairs on April 24, 2008. It passed the House on July 30, 2008. On July 31, 2008, it was received in the Senate and referred to the Senate Committee on Veterans' Affairs.

<sup>89</sup> S. 1283, 110<sup>th</sup> Cong., 1<sup>st</sup> Sess. (2007). The bill was introduced and was referred to the Senate Committee on Armed Services on May 3, 2007.

<sup>90</sup> S. 1363, 110<sup>th</sup> Cong., 1<sup>st</sup> Sess. (2007). The bill was introduced and referred to the Senate Committee on Armed Services on May 10, 2007.

<sup>91</sup> S. 1363, § 3.

<sup>92</sup> *Id.* § 3(c)(5).

<sup>93</sup> *Id.* § 4.

S. 2737 (sponsored by Senator Daniel K. Akaka), the proposed Veterans' Ratings Schedule Review Act, would amend title 38 of the United States Code to grant jurisdiction to the U.S. Court of Appeals for Veterans Claims to review compliance of ratings for disabilities under the schedule of 38 U.S.C. § 1151 with the statutory requirements applicable to entitlement to disability compensation.<sup>94</sup>

## **Author Contact Information**

Douglas Reid Weimer  
Legislative Attorney  
dweimer@crs.loc.gov, 7-7574

<http://wikileaks.org/wiki/CRS-RL33323>

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<sup>94</sup> S. 2737, 110<sup>th</sup> Cong., 2d Sess. (2008). The bill was introduced and was referred to the Senate Committee on Veterans' Affairs on March 10, 2008.