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**STATEMENT OF  
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FOR THE RECORD OF THE  
COMMITTEE ON VETERANS' AFFAIRS  
UNITED STATES SENATE  
JULY 26, 2023**

Chairman Tester, Ranking Member Moran and Members of the Committee:

We are pleased to submit our testimony for the record for this oversight hearing. DAV is a congressionally chartered and VA-accredited national veterans' service organization (VSO) of more than one million wartime service-disabled veterans. To fulfill our service mission, DAV directly employs a corps of benefits advisors, national service officers (NSOs), all of whom are themselves wartime service-connected disabled veterans, at every Department of Veterans Affairs (VA) regional office (VARO) as well as other VA facilities throughout the nation, including the Board of Veterans' Appeals (Board).

Mr. Chairman, the historic passage of the SFC Heath Robinson Honoring Our Promise to Address Comprehensive Toxics (PACT) Act, is now providing benefits and health care to veterans exposed to burn pits, radiation, Agent Orange and other toxins. Starting in January 2023, VA has been adjudicating PACT Act claims.

Based on our experience of providing VA-accredited claims representation and assistance, we are happy to provide our insight and comments on PACT Act implementation; specifically, the positive impact for veterans, the backlog, VA's miscues, VA's outreach and collaboration and DAV's concerns.

**POSTIVE IMPACT OF THE PACT ACT**

DAV represents more than 1 million veterans and family members in their claims and appeals within VA; therefore, we are acutely aware of the toll toxic exposures have had on veterans, their health, their livelihood and families. The positive impact the PACT Act has had for those exposed to toxins has been immeasurable.

After the passage of the PACT Act, VA announced they would start processing all PACT Act related claims on January 1, 2023. However, on December 12, 2022, the Veterans Benefits Administration (VBA) took the initiative to grant benefits for terminally ill veterans in cases where service connection for a PACT Act presumptive condition could be established. VA completed 4,844 claims for terminally ill veterans, 3,118 of which were granted.

In November 2022, a DAV member and female Operation Iraqi Freedom (OIF) veteran established her PACT Act claim for service connection for a reproductive cancer and subsequent complete hysterectomy. In early March 2023, she followed up with DAV for advice on VA's decision that granted her claimed PACT Act cancer and its residuals. Her overall combined evaluation increased and she became eligible for additional ancillary benefits.

In 2004, a Vietnam veteran was denied service connection for diabetes mellitus II as presumptive to Agent Orange exposure as he was not physically in Vietnam but served in the U.S. Navy. Shortly thereafter, the veteran passed away. In 2021, with the assistance of DAV, the surviving spouse filed for Dependency Indemnity Compensation (DIC) based on the passage of the Blue Water Navy Act. The diabetes mellitus II was not service connected at the time of the veteran's death however, the PACT Act included Guam as a conceded location of Agent Orange exposure and the veteran's records established service on Guam. VA was able to grant the DIC as the diabetes was now related to Agent Orange exposure in Guam. The surviving spouse received over two years of retroactive compensation benefits.

In 2012, Alfred Lewis Jr., a Vietnam veteran, sought out DAV's assistance in filing claims for disabilities related to his Agent Orange exposure. VA granted service connection for his ischemic heart disease but denied his claim for hypertension as it was not a presumptive disease and determined not to be related to his heart disease. In the fall of 2022, the DAV National Service Office in Los Angeles reached out to Mr. Lewis to advise him on the passage of the PACT Act and the inclusion of hypertension as a disease related to Agent Orange exposure. A claim was filed and in early 2023 and Mr. Lewis was granted entitlement to hypertension, which increased his overall combined evaluation. He is now entitled to multiple additional benefits including dental health care, which was denied previously.

These few real-life stories reflect the positive impact of the PACT Act on veterans and their families. Additionally, these are clear examples of how professional VA-accredited representation makes a difference in veterans' lives. DAV's benefits advocates are experts in providing the latest information on veterans' benefits, including the most recent updates from the PACT Act.

The intent of the PACT Act was to provide toxic exposed veterans the benefits and the access to VA health care they earned, which it clearly has done in these instances. Prior to the passage of the PACT Act, DAV consistently testified that legislation this large would create significant increases in VA's caseload and would impact the existing backlog of claims.

## **PACT ACT AND THE BACKLOG**

To truly understand VBA's pending claims and backlogged claims, we need to understand that VA defines a case as being backlogged if it has been pending over 125 days. Also, we need to understand how VBA's workload has changed over the past

decade to include the pending claims prior to the pandemic and prior to the PACT Act passing into law.

In 2013, VA's backlog reached historic levels of 611,000 claims pending over 125 days with an average of 282 days to completion and an accuracy determination of 83%. In 2016, VA greatly reduced the pending claim inventory and the backlog of cases.

Just prior to the COVID-19 pandemic, in February 2020, VA had 413,032 claims pending with less than 70,000 backlogged. Within one year, as of February 2021, there was a total of 478,032 claims with over 212,000 claims pending over 125 days. The number of backlogged claims tripled during that year due to the monumental impact of the pandemic. The largest contributor to that increase was the backlog of VA Compensation and Pension examinations.

In February 2022, VBA's case load was 615,000 pending claims with over 259,000 pending more than 125 days. The PACT Act became law in August 2022, which dramatically increased the number of claims being submitted and, in February 2023, VBA had over 742,000 claims pending with 197,353 of them pending for more than 125 days.

VBA's claim inventory, as of July 7, 2023, was over 861,000 claims, of which 252,000 are backlogged. Additionally, the report reflects that over 1 million claims were decided since October 1, 2022. While all of this data reflects the significant increase of claims submitted over the past three years, it notes that the current number of backlogged claims does not exceed those backlogged in February 2022, six months prior to the passage of the PACT Act.

As of July 7, 2023, VA reported it has received over 706,000 PACT Act related claims and has adjudicated over 380,000 of those claims, while managing the current total case load. Within the past two months, the number of backlogged claims has increased by nearly 40,000. Although VA has mitigated this increase of backlogged claims, the sheer number of claims will simply add to the existing backlog. As VA continues to manage the backlog, we urge Congress to continue oversight measures to eliminate any potential miscues in the adjudicatory process that would negatively impact pending claims and the backlog.

### **VA IMPLEMENTATION MISCUES**

While we believe VA has effectively started the implementation process, there are examples of VA's miscues that display the need for constant oversight, collaboration and training.

Upon passage of the PACT Act, VBA issued immediate processing guidance to all VA Regional Offices (VAROs). On September 9, 2022, VBA followed up with more detailed interim guidance, which provided procedural steps to processing PACT Act

related claims. Part of that guidance advised claims processors to hold claims that could not be granted until January 2023, when full PACT Act processing would begin.

VBA's review of the PACT Act decisions dated after August 10, 2022, identified 17,563 prematurely decided claims across all VAROs through December 31, 2022. While some of the decisions were correctly decided, the notification that went to veterans did not include PACT Act language as required by law. The discovery of these prematurely decided claims was found under a compliance review. In January 2023, VA advised that they did not know to what extent all of the claims decisions would need to be changed.

In November 2022, while attending a VA PACT Act offsite event in Baltimore, we became aware of complaints from VA claims processors on VBA PACT Act claims training. This issue was addressed by VBA and they provided an explanation of the training, release dates and guidance.

In December 2022, VBA issued guidance on the specific cancers that would qualify, including prostate cancer as a reproductive cancer for PACT Act claims. However, in early January 2023, several VSOs identified a trend in PACT Act decisions denying prostate cancer as a PACT Act presumptive disease. The decisions stated that prostate cancer was not considered as a reproductive disease and the claims were denied. Subsequently, VSOs followed up and provided VA's own guidance from December 2022.

Additionally, there is confusion within the veterans' community on whether breast cancer for female veterans is considered a reproductive cancer. Breast cancer is a PACT Act cancer; however, it is not easily found on VA sites or on any comprehensive lists. We argue that this can be blamed on the lack of VA regulations specific to the PACT Act and the diseases related thereto. In the meantime, we recommend that VA issue a simple fact sheet or list of those conditions it considers as presumptive diseases under the PACT Act.

VA can mitigate these miscues by increasing awareness and outreach to the veterans' community and their continued collaboration and partnership with the VSO community.

## **OUTREACH AND COLLABORATION**

For 25 years, I have been a DAV VA-accredited benefits advocate providing veterans and their families with claims and appeals representation. During that time, I have not previously witnessed the level of outreach and collaboration that VA has committed to in the implementation of the PACT Act.

### **Outreach**

While VA has been providing outreach since the passage of the legislation, from January through March 2023, VBA conducted 1,560 PACT Act specific awareness events across the country, totaling nearly 6,000 hours. It is estimated to be the equivalent of 20 PACT Act events per day. The events have varied from day-long claims clinics to community townhalls, and many more. Over 60,000 participants have either joined virtually or attended in-person. At claims clinics, VA representatives have been available to answer questions, assist with filing claims and helping veterans and family members understand what benefits they may be eligible for under the PACT Act. Some of the events also offer toxic exposure screenings for veterans. Many VA Medical Centers, like the Robley Rex VA Medical Center, in conjunction with local VSOs, started conducting monthly PACT Act meetings.

In June, VA announced more than 50 PACT Act related events would be held in all 50 states over the summer. As of today, over 30 of those events have taken place. Today, the Vancouver VA Medical Center in Vancouver, Washington, is hosting the 34<sup>th</sup> event.

DAV has been actively involved in PACT Act outreach. We have dedicated a part of our website to burn pits and toxic exposure information, as well as regularly providing information through our magazine, web and social media platforms. In June 2023, DAV completed 27 information seminars on benefits and the PACT Act in local communities within 19 different states.

## **Collaboration**

VBA has conducted several events with stakeholders and Congress, such as the PACT Act Day of Learning and several multiple-day offsite events. DAV has been invited and participated in all of the events. I personally attended one of the PACT Act Day of Learning sessions and the PACT Act offsite event in Baltimore, December 13-14, 2022. I was struck immediately by VBA's genuine inclusiveness of VSO input and collaboration. VBA openly shared the status of all initiatives, their efforts on terminally ill veterans with PACT Act claims, the Automated Decision Tool, and the results of VBA's Overdevelopment Task Force.

Due to our previously raised concerns, VBA has recently shared with the VSO community, its established training for the PACT Act and the related claims and development process. We commend VA on its commitment to intense veteran outreach and VSO collaboration. While we are pleased with VA's inclusion and implementation to this point, we do have some concerns as they move forward.

## **DAV CONCERNS**

Continued oversight of VA will be key for successful implementation of the PACT Act. It is imperative that Congress and the VSO community monitor and collaborate with VA throughout the process. Overall, DAV is pleased with VA's efforts; however, we have the following concerns:

- **Backlog of claims**—As we noted above, VBA to this point, has managed all of the incoming claims, PACT Act claims and the backlog effectively. Although the backlog of claims has not increased beyond the numbers of February 2022, it has not been reduced. Currently, VBA has over 800,000 pending claims. The backlog of cases has risen steadily over the past two months. We are concerned that the backlog may get out of control without correct resources and monitoring.
- **Hiring and Training New Claims Processors**—VBA keeps us advised on its recruiting efforts to hire 2,000 new claims processors. Knowing that it can take 18 to 24 months to fully train a rating specialist, we do have concerns that VBA may not be able to onboard new employees timely to avoid our concerns over a looming increase in backlogged claims.
- **VA PACT Act training**—As we noted previously, there have been some miscues in training and subsequent rating decisions. VA will need to continuously update and monitor its training throughout this implementation.
- **PACT Act regulatory provisions**—VA has published some rule changes in the Federal Register, such as its notice of sub-regulatory guidance in December 2022, updating the presumptive radiations locations based on the PACT Act on March 13, 2023 and the reevaluation of claims for DIC on March 22, 2023. However, VA has not published overarching proposed rule changes since the December 2022 guidance.
- **VA's presumptive disability decision-making process**—Since the passage of the PACT Act, VA has not announced any additional disabilities related to any exposures. Also, we are not aware of any actions of VA's Working Group or if it has even been created, as mandated by law.
- **Individual Longitudinal Exposure Record (ILER)**—As required by the PACT Act, the Department of Defense and VA were to coordinate veteran access to ILER. As of this date, we are not aware of any actions taken by either agency to address ILER access. A review of VA's website notes that updates will be provided in September 2023.

In conclusion, we applaud VA for its implementation, historic completion of 1.1 million claims since October 1, 2022, and its inclusive outreach and collaboration. However, based on our concerns, we urge Congress to continue to hold regular oversight hearings over the next two years. This will assist VA in focusing on its claims processing, training, as well as the quality of the decision-making process. We must ensure that VA is being accountable for the implementation of the most comprehensive toxic exposure statutes ever enacted.

Mr. Chairman, DAV believes that with a proper focus on PACT Act claims processing, the backlog of claims and continued oversight, VA can be successful for

veterans like Alfred Lewis, Jr. We stand ready to assist the Committee and VA in PACT Act implementation. This concludes my testimony and we thank you for the opportunity to provide our comments.