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It Is Time to Address the VA's Enormous Backlog of Claims for Disability Benefits

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Nearly half of the 20 million veterans in the United States use at least one government benefit or service offered by U.S. Department of Veterans Affairs (commonly known as the "VA"). Many of these veterans have developed mental and physical disabilities related to their service, and are entitled to compensation. However, despite the urgency to address the financial and medical burdens hampering our nation's veterans, the process to obtain disability benefits is often long and complicated. In 2017, it took an average of 125 days to receive a decision on an initial claim, while appeals to the Board of Veterans' Appeals (the "Board") took an average of seven years to resolve.

There are a range of administrative, political, and logistical factors that contribute significantly to these delays, such as a marked increase in the number of complex claims, understaffing, flawed case-tracking technology, and high staff turnover. The Board has also found that adjudicators frequently commit errors, release flawed findings, and make determinations based on inadequate information – as high as 57% of cases it reviewed in 2017 – regularly causing both simple and complex cases alike to languish in a backlog for months or years on end.

Furthermore, the VA itself describes the structure of the appeals system as a "complex, multi-stage, non-linear process," which is difficult to navigate as an attorney, let alone as an individual applicant without representation. Through our partnerships with the New York City Bar Justice Center's Veterans Assistance Project, the Los Angeles County Bar Association's Veterans Legal Services Project, and the Legal Services Center of Harvard Law School's Veterans Legal Clinic, Proskauer attorneys have helped countless veterans obtain the benefits they deserve. Even with an experienced lawyer, delays are common and often devastating to indigent and disabled veterans who rely on the financial support for everyday necessities.

There have been recent attempts to address the untenable situation through a push for increased staffing and new legislation. The Appeals Modernization Act (the "AMA"), which went into effect in February 2019, seeks to simplify and hasten the appeals process. Under the AMA, veterans have a choice of three channels through which to challenge a decision: a supplemental claim, a request for higher-level review, or a direct appeal to the Board. The former two options provide an opportunity to resolve disagreements at the regional office level before appealing the Board.

The AMA has had some initial success. Wait times for initial decisions have decreased to around 96 days, while supplemental claims and higher-level review decisions are taking around 60 and 41 days, respectively. Long delays, however, still persist for Board appeals, which may be due to the prioritization of "legacy" appeals (those that were pending prior to AMA becoming law).

And, unfortunately, the COVID-19 public health crisis has threatened this recent modest progress. At the onset of the pandemic, the backlog of initial claims had been kept relatively stable at 70,000, but by May 29, 2020, it had spiked to 114,000. While the VA continues to accept, process, and decide claims while working remotely, the in-person medical exams which provide crucial evidence of a claimant's disabilities and are usually integral to proving a claim were suspended from April 2, 2020 through late May 2020. Exams have resumed in many locations but the suspension likely has contributed to the growing backlog and slowed the decline in processing times.

It is too early in the law's implementation to know whether the AMA signifies any meaningful change for former service members. One thing, however, is certain: the resources, support, and services offered to veterans with disabilities are inadequate. The VA needs significant investment and improvement in their clinical, adjudicatory, and administrative processes if it is to properly care for those who selflessly gave their health for the safety of this nation.

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