

### Highlights of Benefits Recently Won with American Legion Representation

(The American Legion Department of Indiana Veterans Service Office employs a staff of seven full time employees responsible for ensuring veterans received their earned benefits. The following are a few examples of benefits won that veterans might not have otherwise received if not for our department service office staff.)

- **Benefits Restored with Excellent Representation:** VA had previously granted service connection for a veterans' diabetes based upon its relationship to Agent Orange exposure while the veteran was serving in Vietnam. An April 22, 2014 VA decision then severed service connection for the diabetes stating that the previous decision granting service connection was in error because records failed to show the veteran served in Vietnam. In December 2015, the veteran asked for American Legion representation. Department Service Officer Steve Hicks reviewed the evidence of record and interviewed the veteran. Steve also conducted research and found that the ship the veteran served on (the USS Okinawa (LPH-3) operated as a troop transport with helicopters and smaller vessels transporting troops on and off shore for amphibious assaults, with evidence that crew members went ashore to assist civilians during the time the veteran served aboard that ship. Steve then helped the veteran write a statement about how he was part of a six man team that would leave the ship for providing indirect fire with their assigned 81mm Mortar. Steve then convinced VA that the veteran's statement is consistent with the ship's history, and VA restored service connection for the diabetes and its residuals. This resulted in the veteran receiving a one-time retroactive compensation benefit of over \$13,000 and continued monthly compensation benefits of \$558. Without qualified representation, the veteran would likely not have been able to have his benefits reinstated. (V: 60031)
- **Claim file reviews can find Clear and Unmistakable (CUE) VA Errors:** A veteran has only one year to file a notice of disagreement with a VA decision before that VA decision becomes final. Once a VA decision becomes final, the veteran must submit "new and material evidence" before VA will make another decision concerning the same issue. An exception to this rule is when VA had made a "clear and unmistakable error" (CUE) in a decision that has since become final. These are not easy errors to find. Clear and unmistakable errors must be errors that are undebatable, so that it can be said that reasonable minds could only conclude that the previous decision was fatally flawed at the time it was made, and the error must be based upon the record and law that existed at the time of the prior decision. While reviewing a veteran's claim file in March 2016,

Department Service Officer John Hickey found a CUE in a March 2013 VA decision that granted only a 10% compensation rating for a veteran's heart condition. The March 2013 decision had granted the 10% rating based upon continuous medication being required for the veteran's service connected heart condition, but John reminded VA that the evidence at the time also included an echocardiogram showing mild left atrial enlargement and the VA Schedule for Rating Disabilities, Diagnostic code 7005, notes that cardiac hypertrophy or dilatation warrants at least a 30% compensation rating. VA agreed. On April 8, 2016, VA declared the March 2013 decision a clear and unmistakable error resulting in the retroactive grant of the 30% rating effective from September 10, 2011 and a lump sum retroactive payment of \$19,981.60. The veteran would have likely never and know to file the CUE claim without the qualified American Legion representation. (V: 15711)

- **Veterans having a 100% service connected compensation rating with other service connected disabilities independently rated at 60% or more are entitled Special Monthly Compensation benefits:** While review a VA rating decision, Department Service Officer Stephen Hicks noticed that the veteran had been granted a 100% service connected compensation rating, had other service connected disabilities independently rated at 60%, but VA failed to grant the higher Special Monthly Compensation "S" rating under the provisions of 38 USC 114(s) and 38 CFR 3.350(i). Steve immediately took this concern to the rating official who agreed and granted the SMC "S" rating. This quick action resulted in the veteran receiving an additional \$346.84 per month. Without knowledgeable representation, the veteran would have likely never known of VA's mistake, and would have likely been underpaid for years if not for a lifetime. (V:12722)
- **VA may sometimes over-develop for evidence then deny needlessly when that evidence is missing:** VA denied a Korean war veteran's claim for service connection of defective hearing after receiving notice that the veteran's discharge examination report could not be found. Department Service Officer Stephen Hicks argued that hearing examinations completed at the time the veteran was released from active duty were very inadequate for rating purposes, and those records could not be used to disprove the existence of a hearing impairment at service discharge even if VA could find the veteran's discharge examination report. Steve also argued that the veteran's military duties in Korea would have exposed him to noise trauma, and that information alone should cause VA a duty to obtain a medical opinion concerning if the veteran's current defective hearing is likely as not related to his noise exposure while serving in Korea. VA agreed, asked for the medical opinion, received a positive medical opinion, and granted service connection. This resulted in the veteran receiving a monthly compensation

benefit of \$133, a retroactive compensation benefit of \$2,521, and other benefits, such as, entitlement to VA health care for any medical condition and a state of Indiana property tax exemption benefit. (V: 57764)

- **Severely disabled veteran gets quick pay rating action:** Department Service Officer Steve Hicks received a claim for service connection of adrenal gland, lymph node, and sacral gland cancer. Understanding the obvious terminal risk the veteran was facing, Steve placed his inter-personal skills to work with VA team leaders, and convinced VA to work the claim as a “Quick Pay Claim.” As a result, the claim received on June 28, 2016 was granted on June 29, 2016, and the veteran is now being paid a monthly benefit of \$3,415.74. (V: 59746)
- **Life Saving Action:** Department Service Officer David Wilson is known for keeping veterans from committing suicide. David reports having another recent incident with a veteran threatening suicide. Dave reached out to appropriate sources and obtained the veteran life-saving help. (V: 58718)
- **Informal Conference Speeds Rating Action:** While preparing for a hearing, Department Service Office Steve Hicks introduced new evidence to the hearing official during an informal conference prior to the hearing. The hearing official agreed that the new evidence warranted the grant of the higher compensation rating and immediately granted the increase from 60% to an 80% compensation rating. Steve’s good professional relationship skills with VA regional office officials saved the veteran from having to attend a hearing, got a decision much sooner, and, best of all, allowed VA to grant the appeal. The veteran soon received a retroactive benefit payment of \$7,078, and his monthly recurring compensation benefits were increased from \$1,059 to \$1,551. (VIMS 45857)
- **National Work Queue Brings Added Complications:** Working with VA claims and reviewing VA rating decisions are complicated enough, and it has become even more complicated after VA launched its National Work Queue (NWQ). For some time now, VA has been scanning veterans’ claim file records into an electronic records system called the Veterans Benefits Management System (VBMS). VA’s NWQ system allows VA to instantly transfer those electronic records to any VA regional office in the United States. This process therefore allows VA to work those claims at the VA regional office having the most immediate resources. For instance, a claim filed by a Hoosier veteran may be transferred to the Washington State VA Regional Office (VARO) for gathering evidence (claims development) then transferred to another regional office, such as, the Louisville

VARO for a decision, then transferred to another VARO, say New Orleans, for award action. This complicates the service officer's job of tracking and viewing VA decisions and award actions. Not only are Hoosier veterans' claims often worked at other VAROs, claims for veterans from other states are often worked at the Indianapolis VARO. While reviewing a veteran's claim following an award action at the Indianapolis VARO, that was electronically decided (rated) at the Los Angeles VARO, Department Service Officer Steve Hicks noticed VA had failed to grant an effective date from the date of VA's receipt of an "Intent to file" notice instead of the date of claim. Steve found it difficult to track down the VA rating official because the rater who worked at a Los Angeles VARO using NWQ rules, placed an alias name in place of their real name on the rating code sheet. Steve therefore conducted research for "breaking the code" and finding the VA employee who made the decision. Steve then sent the VA rater an e-mail explaining how he believed a mistake was made. The rater agreed, and immediately granted the earlier effective date consistent with receipt of the "Intent to file" notice and authorized an additional retroactive benefit of \$1,447.71. Without qualified representation the veteran would have likely not ever received the higher retroactive benefit. Even more important, however, Steve shared his research findings with his associate service officers allowing them to also work VA's NWQ system better by finding VA rating officials at other VA regional offices. By the way, the veteran happened to live in New York. (V: 6445)