Invincibility is Incongruous with Disability Compensation Benefits:

An Education Proposal for Current Service Members

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I. Introduction

The Department of Veterans Affairs (VA) is regularly in the headlines with allegations of mismanagement, delays, and backlogs, whether on the health side of VA or on the benefits side. While there are considerable problems currently noted in VA’s health system, this white paper will focus on VA’s disability compensation benefit system. Many veterans claim that VA is trying to “Delay, Deny, Wait until I Die.” The current disability compensation system requires that veterans struggle to work through an antiquated system and deal with claims processors who lack training in medicine or the law, both combining in a maelstrom that created over one million backlogged claims and a system that has taken the spotlight over the past several years.

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Veterans are understandably required to prove three important facts regarding the claims they make in order to receive disability compensation benefits; namely, one must prove that he is a veteran,\(^5\) that the injuries for which he is claiming benefits have a nexus to his service, and that he is still suffering from these injuries, and thus a current disability exists.\(^6\) For many veterans, however, proving these elements can be a taxing and cumbersome process requiring the exhuming of already scarce active duty medical records;\(^7\) multiple doctor and specialist visits attempting to accurately diagnose each condition still present; connecting those disabilities back to active duty service; and then repeating the process when VA denies the claim and the veteran seeks to appeal that decision. More often than not all of this evidence gathering and claims preparation is performed without any legal assistance despite its great propensity for aiding in the process.\(^8\) Requiring veterans to complete this complicated process with almost no prior guidance during active duty service as to what they will need to prove, what proof will be required, or the most effective ways to navigate the system, surely does not fulfill VA’s mission to “serve and honor the men and women who are America’s veterans,”\(^9\) or their duty to assist as required by the Veterans’ Claims Assistance Act.\(^10\)

II. **The Problem: Veterans Often Lack Evidence to Prove a Nexus Between Service and Disability**

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\(^5\) See Eligibility at [http://www.benefits.va.gov/COMPENSATION/types-disability.asp](http://www.benefits.va.gov/COMPENSATION/types-disability.asp), which includes, among other things, active duty service in one of the Uniformed Services and a discharge under other than dishonorable conditions.


\(^7\) Exemplified in the case of Stanley Friedman, a WWII veteran who struggled until he was 92 to attempt to prove his service to the VA. Unable to exhume records of his service that may have been lost in the time between his service and his filing for benefits, he was repeatedly denied benefits for his anxiety, depression, and post-traumatic stress. Unfortunately, cases such as these are not so uncommon as to be an exception to the rule. Story: Ravve, Ruth. "Combat Veterans Face 'cruel' Struggle to Prove Their Service to VA, amid Missing Records." FOX News. FOX News Network, 27 Mar. 2015. Web. 29 Mar. 2015.


While many of VA’s current problems lie in the systemic failure of an enormous bureaucracy that prevents change just from the sheer magnitude of necessary reform,\(^{11}\) there are some simpler steps that may be taken that will facilitate the process for future veterans. One solution, which will be presented in greater detail in this white paper, is to address the challenges confronting veterans when attempting to prove the nexus of an injury to their service. Many active duty service members enter the military and serve their full tenure without considering much about their lives post-service. Such an attitude of invincibility and present-mindedness is often the paradigm among many of the enlistees and officers entering the service during the prime of their lives. Although a good attitude to have when going to war, it does not serve them well when transitioning to their post-service lives.

Our active duty service members typically go through service avoiding medical evaluations for fear of being deemed unfit for service, or out of a lack of awareness of the severity of injuries they may have suffered, either mentally or physically. Service members perpetuate the prevailing attitude of “tough it up,” sometimes even being encouraged by authorities to stay quiet about injuries,\(^{12}\) leaving them with limited, if any, active-duty medical records in support of injuries or illnesses upon retirement or separation. This presents a problem, for instance, for a veteran who wishes to make a claim for post-traumatic stress disorder (PTSD), but never went to see a psychologist, the medic, the chaplain, or told a friend or fellow soldier about traumatizing events she experienced during service. In addition to a lack of medical records proving an illness or injury, given the chaos of combat, incidents likely to prompt trauma


are likely to go unrecorded, a fact recognized by Congress. Such is often the case, for instance, with military sexual trauma (MST), especially given the fact that the victims must often continue to work alongside the perpetrators, thus forcing the victims to attempt to prove the occurrence of the trauma years later with no record of the event occurring. With no medical records, lay or other evidence to prove the underlying traumatic event in service, the veteran will be unable to prove the nexus between service and her PTSD, thus leaving her without benefits.

The concerning part about this story is that it rings true for many veterans attempting to file a claim for any kind of disability benefits, not just in sexual assault and other PTSD cases. The prevailing “man up” attitude of the military, as well as service members’ complete lack of knowledge on the subject of benefits post-service, exacerbate the problems in the process because veterans are less able to provide VA with detailed records that corroborate the incident or injury that form the basis of a claims request. On closer examination, one can see that the current VA conundrum of a backlog of claims, many of which lack evidentiary support, is not wholly the responsibility of the monstrous bureaucracy, but also the responsibility of the Department of Defense (DoD). Better education of our service members regarding the

13 38 U.S. Code § 1154 (b) “In the case of any veteran who engaged in combat with the enemy in active service with a military, naval, or air organization of the United States during a period of war, campaign, or expedition, the Secretary shall accept as sufficient proof of service-connection of any disease or injury alleged to have been incurred in or aggravated by such service satisfactory lay or other evidence of service incurrence or aggravation of such injury or disease, if consistent with the circumstances, conditions, or hardships of such service, notwithstanding the fact that there is no official record of such incurrence or aggravation in such service, and, to that end, shall resolve every reasonable doubt in favor of the veteran . . . “ [emphasis added]
15 See also AZ v. Shinseki, which provides a detailed account of the difficulties incurred by the non-reporting of sexual trauma, as well as a legal ruling that a lack of records cannot be used as evidence that an event did not occur.
16 It should be noted that in 2013, VA did relax the evidentiary requirements necessary to validate an MST claim, and now directs that claims-rating specialists look for “markers” that indicate a specified traumatic event, for instance requests for transfers, or work performance or behavioral changes, that correspond to the MST allegation. In addition, claims specialists are receiving more training. See Bryant, Ashleigh, “Military Sexual Trauma Claims to Be Re-Evaluated,” at http://www.dav.org/learn-more/news/2014/military-sexual-trauma-claims-re-evaluated/. Jan. 23, 2014. Although this is an improvement, there is reportedly wide disparity in how different claims examiners view “markers” and what constitutes an acceptable “marker.” A lawsuit filed by Service Women’s Action Network, Vietnam Veterans of America, and Yale’s Veterans Legal Services against VA is ongoing, and seeks to lessen the burden of proof for MST claims to that afforded combat veterans. See Poppe, Tessa, “The VA Is Now Being Sued For Discriminating Against Victims Of Military Sexual Trauma,” at http://taskandpurpose.com/va-sued-discriminating-victims-military-sexual-trauma/. Aug. 5, 2014.
information they should report or keep track of during service, and the requirements they will face in making a claim after service, should be undertaken by the DoD and our armed services\textsuperscript{17} as a way to ease the process for those veterans who will require a claim for disability benefits after concluding their service. The DoD can undertake this education in collaboration with VA, a partnership which, up until this point, has been virtually non-existent except for a recent initiative by President Obama to aid in the transition from active duty health care to VA health care,\textsuperscript{18} and some collaboration on training and employment after separation as part of the Transition Assistance Program (TAP).\textsuperscript{19}

Given the nature of the interrelatedness of the two departments, one responsible for our active duty service members and the other responsible for them after separation from service, greater collaboration would seem almost a necessity in order to properly assist our service members in transitioning as seamlessly as possible between their time of service and veteran status. To remain separate is almost to remain opposed, encumbering each department with the responsibility of recreating each person in its separate labyrinth, rather than sharing the information about each member between agencies in a joint operation, first as a soldier, then as a veteran. Such a transition may seem difficult, but it can be achieved through changes in policy that help to facilitate the process one step at a time. Small changes can be made to help initiate a move in the right direction for the benefit of the essential members that VA and the DoD serve. The small change being proposed in this white paper is a change to the way active duty service members are educated about their benefits, and the importance of encouraging them to keep contemporaneous medical and incident records during service.

\textsuperscript{17} For purposes of this proposal, I will focus on efforts that can be initiated at the DoD level; however, each branch of the armed forces could choose to undertake such education efforts with or without direction from DoD.


As mentioned previously, active duty service members tend to fall victim to the paradigm of “man up” or “tough it out,” facilitating negligence in record keeping that would document medical treatment or incidents in service that could potentially be used in future disability compensation benefit claims after service. These men and women cannot be expected to know of their own negligence, however, because the current education device used to inform them of their right to benefits comes in a 30-minute talk during TAP\(^{20}\) provided just before separation or retirement.\(^{21}\) When veterans were asked about the disability benefits education they received before separation, this abbreviated overview was not the exception, but the rule, overshadowed by an array of information about other benefits, career planning, and support services.\(^{22}\)

Most people leaving the military do not receive nearly enough education or information to actually assist them in tackling the cumbersome and drawn out claims process, nor are they made aware that there are records or reports they might need in the future that are easier to get at separation than years or decades later. This seems almost negligent on the part of the DoD given the significant number of service members who will need such information to support a disability claim, including the 43\% of veterans from current conflicts who are filing claims.\(^{23}\) While educating veterans about the disability claims process is important, even more important may be to educate active duty service members about the importance of contemporaneously recording their injuries, illnesses, and incidents in the event that they must someday file a claim for

\(^{20}\) “The Transition Assistance Program (TAP) was established to meet the needs of separating service members during their period of transition into civilian life by offering job-search assistance and related services,” [see http://www.taonline.com/TapOffice/What-is-a-TAP-office](http://www.taonline.com/TapOffice/What-is-a-TAP-office); the TAP includes collaboration between DoD, VA and others, but has more of a focus on training, skill building and career readiness for service members transitioning out of the military than a focus on the disability compensation process or benefits.

\(^{21}\) William Burke, former USN Lt. Com., current member of William & Mary Law School’s Class of 2015; student in the Puller Clinic.

\(^{22}\) Information obtained from interviewing several veterans, active duty service members, and students associated with the Puller Clinic in December 2014 and January 2015, including Aniela Szymanski, Esq. (Major, USMCR), John Paul Cimino, Esq. (Army veteran), William Burke (Class of 2015; former USN Lt. Com.), and Stephen Beaty (Class of 2016; Captain, U.S. Army), as well as information provided by Sydney Haanpaa (Class of 2016; married to an active duty Army officer).

benefits. Not only does the educational information regarding the complex disability compensation claims process provided during TAP require improvement, there also needs to be education provided during basic training and at regularly scheduled intervals throughout active duty service, so that service members understand the importance of documenting illnesses, injuries, and incidents before they leave the service. In addition, the system should encourage service members to request personal copies of their medical and personnel records upon separation for their own safe keeping in order to help maintain adequate records in the event of lost information.\textsuperscript{24} In the event a veteran ends up suffering from a disability that requires evidence to support a compensation claim after leaving service, the more complete and accurate the medical and personnel records and contemporaneous evidence the veteran submits, the easier and more efficient it will be for VA to adjudicate the claims.

III. The Proposed System: Education during Service and the I³ Log

The primary objective of this proposal is to encourage the DoD to design and incorporate an educational initiative during basic training and at regularly scheduled intervals throughout active duty service that informs service members of the importance of keeping detailed and contemporaneous medical records of illness or injury, as well as details regarding traumatic incidents that occur during service. The proposed curriculum would also educate service members, preferably in collaboration with VA, on the benefits they are entitled to upon leaving the military, the details of which many are completely unaware.\textsuperscript{25} The realization of these two goals would allow more veterans to utilize the Fully Developed Claims Initiative employed by

\textsuperscript{24} One such example of lost records can be found here: \url{http://www.archives.gov/st-louis/military-personnel/fire-1973.html}. This website details the story of a fire that destroyed roughly 16-18 million Official Military Personnel Files. These events are rare, but their impact could be ameliorated through veterans requesting personal copies of their medical and personnel records upon retirement, or the DoD proactively providing them.

\textsuperscript{25} William Burke, former USN Lt. Com., current member of William & Mary Law School’s Class of 2015; student in the Puller Clinic.
VA beginning in 2013, wherein the claims process can be expedited through a veteran’s submission of a complete and thorough claim, and VA can adjudicate that claim more quickly and efficiently. Without such an educational component in place, service members will continue to go through the military under the current paradigm; when and if they file for claims related to a disability incurred during active duty service, many of them will find it difficult, if not impossible, to adequately prove the nexus of their injuries to their service. It is reasonable to conclude that if there are significant reforms that encourage active duty service members to keep contemporaneous records of illness, injury, or incidents during service in anticipation of retirement or separation, the complexity of the process of filing for benefits will be dramatically ameliorated and facilitated. It is important to note that while this proposal attempts to provide a solution for some of the current problems faced by veterans filing for disability claims, it is in no way proposing that any service member’s failure to comply with the proposed initiatives should be used as negative evidence against a claim for benefits. Instead, a service member adopting the measures in this proposal would provide additional, although optional, facilitation to the process.

As noted, one of the current problems creating conflict between VA and the veterans it is trying to serve is the difficulty veterans encounter in proving the nexus between a current disability and active duty service, one of the three requirements for the awarding of benefits. Without adequate records of illness, injury, or incidents in service, veterans often face delays and denials, and VA must regularly adjudicate insufficiently substantiated claims, which adds difficulty to a system already plagued by inefficiencies, record-breaking submissions of claims,


27 While “VA presumes that specific disabilities diagnosed in certain veterans were caused by their military service [e.g. those who were on land in Vietnam are presumed to have been exposed to Agent Orange and a resultant list of medical conditions considered caused by that exposure], and if “one of these conditions is diagnosed in a Veteran in one of these groups, VA presumes that the circumstances of his/her service caused the condition, and disability compensation can be awarded,” those presumptions only apply to selected veterans with specific disabilities. For disabilities and circumstances not included in the limited list of presumptions, veterans must prove that their service caused or aggravated the disability being claimed. See http://benefits.va.gov/BENEFITS/factsheets/serviceconnected/presumption.pdf, (last visited Mar. 29, 2015).
and resultant backlogs. An educational curriculum must be created in order to better inform service members of the importance of keeping thorough medical and incident records during their service, as well as provide insight into the details of the claims process they may encounter after service.

When addressing how best to implement additional education for service members on the importance of maintaining contemporaneous records of illness, injuries, and incidents, the benefit claims process, and the requisite training to do so, there are several things that must be considered. The first question regards the timing of when the proposed education would be provided. Given the existing paradigms of military culture previously discussed, education on the importance of keeping accurate records regarding illness, injury, and incidents, as well as guidance about important factors of the claims process, including evidentiary requirements, would have to occur during set intervals at specific times during active duty. To give a brief lesson a single time would follow the same methodology employed now in discussion of disability compensation benefits during TAP, more of a “checking the box” than an impactful training. Instead, a system must be put in place that provides not only the initial education, but also provides reminders and facilitates the heeding of the lessons provided.

Appropriate timing is paramount to the success of the proposed education initiative. This paper proposes that the most appropriate time to introduce service members to the importance of keeping detailed and contemporaneous records of injuries, illnesses, and incidents incurred during service would be during basic training. Currently nothing is in place that educates new service members about the importance of keeping accurate and detailed medical and incident records for potential use in the event they one day suffer from a disability and seek to claim the
benefits to which they are entitled.\textsuperscript{28} VA does not work adequately in conjunction with the DoD to ensure that service members are both aware of and prepared for their eventual opportunity to claim benefits for service related injuries. If service members are not aware that any lasting injuries may allow them to claim benefits as well as what evidence they will need to prove a claim for those benefits, they will be less likely to report to medical officials during their service or keep other contemporaneous records of ailments and traumatic injuries. This behavior will lead to challenges proving that injuries incurred during service if they suffer resultant occupational or social impairments constituting a disability after separation from service.

The content and organization of the basic training introduction to the importance of keeping contemporaneous records of illness, injury, and incidents is as important as the timing. Making the lesson too long and drawn out runs the risk of losing the attention of the students, while one that is too short and superficial runs the risk of not having a significant enough impact to make a difference. A balance between these two extremes must be achieved through the consideration of the audience. According to interviews conducted with several active duty service members and veterans, some of the most effectual lessons during basic training were those that included brief (not exceeding roughly 15-20 minutes), entertaining videos that provided necessary information in a comedic or memorable fashion.

Using this as a guideline, it is proposed that the DoD employ a video, roughly fifteen minutes in length, that would follow the typical service member as he or she progresses through the military, keeping detailed records of illnesses, reporting injuries and ailments to the proper authorities, and noting traumatic incidents that occurred during service. This could be juxtaposed with a service member progressing through the military without keeping these contemporaneous records or reporting such events. The end of the video could highlight the differences in each

\textsuperscript{28} Aniela K. Szymanski, Esq.; Major, USMCR; Visiting Professor of Law in the Puller Clinic at William & Mary Law School.
service member’s experiences with VA when trying to claim disability benefits, with the vigilant record keeper easily obtaining benefits with the necessary evidence in hand, and the other service member being denied benefits for lack of evidence of a nexus with active duty service. True stories of veterans getting caught up in the claims process can also be included as a caution to current service members, or a guest speaker could come in and speak about the subject matter and his or her own claims experience, to add extra pathos and reality to the lesson.29

Finally, a sample form can be created and provided to service members for their own personal use, perhaps entitled an I³ Log.³⁰ The I³ Log would be a form that encourages service members to record, for their own benefit in case the information is ever needed, the who, what, when, and where of Illnesses, Injuries, and Incidents occurring during service. A veteran can typically prove veteran status easily, by providing evidence to VA of their honorable discharge with their DD-214 form, and can acquire medical records from VA or private practitioners to confirm a current disability. However, the most challenging evidence for a veteran to provide is typically the nexus between the current disability and active duty service, particularly since time between the disability and service may be years, or even decades.

In addition to medical records that may exist if the service member did seek medical treatment while in service, the service member could use the proposed I³ Log as evidence of contemporaneous physical or psychological symptoms experienced during service from an illness or injury, or details of a traumatic incident experienced by the service member. Incidents such as IED blasts, deaths to fellow troops, chemical or burn pit exposure, falls from equipment, 

29 This recommendation for a video intends to serve as a basic guideline for the implementation of such an educational device during basic training. More discourse on the matter, as well as trials to test other possible alternatives or video ideas, would be necessary before the implementation of such an initiative in order to ensure maximum efficacy and prevent any misconstruction of the goals and motivations of such an educational device.
30 I-Cubed Log, or a log intended for the recording of the three I’s: Injuries, Illnesses, and Incidents. This log would not be required, nor would it be submitted or collected in any way. It would be a personal record that the veteran could rely on if needed in the future to establish a nexus to an injury, illness or incident in service. In order to ensure the success of this proposal and protect our service members who choose to utilize these suggestions, or not, the proposal includes the directive that no absence of the proposed record-keeping should be used as negative evidence in the assertion of a claim by a veteran.
auto or equipment accidents, training injuries, panic attacks, suicidal ideations, military sexual trauma – all could be, in addition to or instead of official medic visits, depending on the decision of the service member whether to seek treatment at the time, reported in the service member’s personal and voluntary I³ Log. The I³ Log would then be kept for future reference in case it is ever needed to establish the required nexus in a disability claim. This would alleviate the problem faced by many veterans today, ones who, decades or years later are required to establish the requisite nexus in the absence of any official records during service, either because they never reported the illness, injury, or incident, their memories fail them and there are no fellow troops available to support the underlying event, or because when they write for their military personnel and claims files, the records are missing or incomplete.

Although service members cannot be expected to record every event that occurs while subject to the rigors and stresses of combat, the I³ Log would provide a tool for evaluation of experiences once the service member has left the combat environment or an incident concludes. Even service members who fail to complete an I³ Log contemporaneously, but who fill it out soon thereafter or at separation at the latest, will be in a much better position than those who keep no records and then find they must establish the nexus between their disability and active duty service years or decades later. Although VA allows for certain presumptions to be made regarding service connection for certain disabilities, the majority of veterans will not qualify for the presumptions or will have some disabilities not included on the presumptive lists. Use of the I³ Log will help immensely in providing the nexus required for benefit claims for those veterans and disabilities not included in the presumptions.

In addition to the implementation of a lesson during basic training and introduction of the I³ Log, there must be periodic reminders throughout service. These reminders can come in the
form of compulsory refresher courses given every three or four years, as part of a service member’s annual medical examination, or as a quarterly reminder for all those undergoing In-processing or Out-processing. These reminders would ensure that service members receive assistance and guidance regarding the importance of record-keeping, but would also reinforce that given the non-compulsory nature of the initiative, no absence of records could be used as negative evidence against any future claims made by an individual. In addition to these refresher courses, a commercial reminder for the maintenance of proper medical and incident records could be aired on the Armed Services Network, thereby ensuring a constant presence in the minds of service members and providing them with all the reminders they may need to ensure they report their medical ailments, injuries, and incidents to the proper officials, and/or keep a contemporaneous Log.

In addition to the foregoing suggestions, the current education on veterans benefits provided during Out-processing must be reformed. The current model provides minimal information on veterans’ benefits to soon to be veterans amidst a whirlwind of other information, and offers zero assistance in the disability benefits process itself. The proposed new system should provide additional information for service members transitioning to civilian life regarding their access to disability compensation benefits if they suffered from a disability during service, such as how to file for benefits and the necessary information they must provide, what to do if they encounter any problems in the process, contact information for people they can reach out to with questions regarding the benefit process, and detailed forms and descriptions regarding how to begin the process and who to contact for assistance. In addition, service members should be encouraged to request a copy of their medical records and military personnel file when they separate from service. Such a precaution would help to prevent problems encountered as a result
of lost or missing medical or service information that often occurs when veterans attempt to obtain records many years, or even decades, after departure from service. Offering this more extensive addition to the Out-processing education on veterans’ benefits provides these soon to be veterans with the information, resources, and knowledge they require in the event they have lasting health effects from service that would entitle them to benefits. In addition, because the signature injuries of our current conflicts include PTSD, traumatic brain injuries, and other disabilities that can cause cognitive challenges, it is even more incumbent on the DoD to provide more guidance and assistance in regards to the disability compensation process during Out-processing.

IV. Overcoming Obstacles to the Proposal

The foregoing suggestions for reform to educate our service members about the importance of contemporaneous record keeping during service is just part of the solution. There must also be a reform to the current military culture which precludes service members from considering the importance of documenting their illnesses, injuries, and incidents and seeking appropriate treatment, and the belief among veterans that disability compensation benefits are special benefits for only those with the most serious injuries. Instead, disability compensation benefits are “workman’s compensation” for those who serve, providing those injured during service with the benefits to which that service entitles them. Ensuring that veterans view their benefits in this way will help to remove their reticence in claiming and receiving the post-service benefits to which they are entitled.

Assuming active duty service members heed the advice in this educational proposal, it would allow for more efficient and successful adjudication of claims and create a less obfuscated

31 William Burke, former USN Lt. Com., and current member of William & Mary Law School’s Class of 2015; student in the Puller Clinic.
environment to initiate further collaboration and reform between the DoD and VA, between service member and veteran. The biggest obstacle to the proposal is the prevalent attitude of service members: an attitude that prevents their willingly reporting medical ailments to the proper officials for fear of being taken off duty; because they consider it more honorable to keep quiet about their ailments, they choose to fight through the pain rather than seek help; and, many service members conclude that there are others with more serious injuries who deserve medical help or benefits more than they do. The shifting of this paradigm is unlikely to happen quickly, but methods can be implemented to help circumvent these obstacles and dispel any false convictions held by the service members. This paper will address each of these obstacles individually.

To address service members’ unwillingness to report ailments for fear of being deemed unfit for service, particularly specialists with some of the strictest standards for duty, for instance Special Forces or pilots, a list could be compiled of common medical conditions, noting which ones do and do not disqualify someone for service. Making this list publicly available would allow service members to see whether or not a report of an injury or illness would lead to suspension of duties or separation from service. Although this remedy is likely to only encourage reporting of injuries or illnesses that do not result in suspension of duties or separation, it would be an improvement over the current system because service members would at least be more inclined to report the injuries and illnesses that do not carry severe consequences, rather than reporting no injuries at all.

An additional benefit of posting such a list is that it would also be an opportunity to encourage high ethical standards, warning service members that failure to report a disqualifying illness or injury could result in the endangerment of others, and thus might result in their
punishment for non-reporting. This simple education regarding common illnesses and injuries and the repercussions, or lack thereof, of reporting would help encourage service members to seek medical treatment in instances when to do so will not cause disruptions in their service. It should be noted that service members have a right to medical privacy for conditions that are not disqualifying. Unfortunately, this right to medical privacy is not always known by service members, nor taken into account by commanding officers, a phenomenon that may discourage the reporting of non-disqualifying ailments to medical officials. As part of this proposal, it is suggested that knowledge of this right to privacy be proliferated among commanding officers and their subordinates in order to ensure lawful privacy practices and foster a feeling of safety when service members report non-disqualifying conditions. Once the service member understands the importance of reporting medical conditions, he or she will not only get the requisite medical treatment, but there will also be a medical record that might later help serve as evidence in a disability compensation claim for lasting injuries or illnesses following separation from service.

The paradigm of honor over weakness can be reframed so that reporting illness or injury during service constitutes an honorable thing to do for the sake of self and others. If the warrior ethos is celebrated over the protection of others, the trend of keeping ailments under wraps will continue. Through the proposed educational campaign, service members should be taught that reporting injuries and ailments that may impact their service is their duty to their peers, so as to not leave them exposed or endangered because of a serious unreported illness or injury. This change in culture, viewing one’s own health as something impacting fellow service members,
those men and women that service members are taught to value over themselves,\(^\text{33}\) will not only encourage service members to protect their peers by seeking treatment, it will have the added benefit of providing a medical record of that ailment, one that can later be used as part of a benefit claim post-separation if a disability persists.

Concerning the view held by service members and veterans alike that disability benefits and medical attention are only for those with more serious injuries than they themselves experience, service members and veterans must be informed and reminded of their entitlement to said assistance. As part of the proposed education, service members should be reminded that it is every honorably discharged veteran’s right to claim benefits for any disabilities that persist after service that were incurred during service,\(^\text{34}\) and that making such a claim does not take away benefits from any other deserving veteran, whether more or less seriously injured. Many veterans with more mild conditions consider service members who lost their lives in service, or see other veterans with missing limbs or suffering extreme trauma, and they believe that by claiming benefits for their more mild conditions, they are taking away from other veterans who, in their minds, are more deserving and need it far more.\(^\text{35}\) This, however, is not the case, as VA has the responsibility of providing benefits to any honorably discharged veteran with lasting, service-related injuries and ailments. It is reasonable to believe that if veterans know that they are not taking away aid from others by claiming aid for themselves that more veterans will seek such aid from VA.

The ingrained beliefs and military culture that prevent service members and veterans from seeking assistance can be overcome through adequate education and the dispelling of certain misconceptions. Reforming education of service members and veterans regarding


\(^{35}\) William Burke, former USN Lt. Com., current member of William & Mary Law School’s Class of 2015; student in the Puller Clinic.
benefits and the disability claims process will help ameliorate problems currently caused by incomplete applications and an excess of appealed claims. The argument in support of increasing education for service members about the claims process while they are still on active duty is fairly evident. As the bureaucracy of VA undergoes more revisions, the regulations surrounding benefits become more complicated, our service members endure more repeat deployments, and our returning veterans from the current conflicts experience more significant and prevalent disabilities after separation, more assistance should be provided at earlier stages in order to prepare them for the process they may one day undergo if service-connected disabilities persist.

To assume that not every veteran will claim benefits, making universal education on the subject superfluous, is negligent when, as mentioned previously, 43% of veterans from the current conflicts are filing claims for disability benefits, a figure that may continue to increase. Providing education to service members on active duty about the disability claims process, and the evidence that they may one day need to prove that any illness, injury, or incident occurred while in service is increasingly necessary as the process of claiming benefits and appealing denied claims becomes more cumbersome, complicated, and prevalent. The failure of the current system is evident in cases such as that of a veteran who was knocked off of a tank and hit his head, briefly losing consciousness but at the time thinking nothing of the injury given the lack of blood and his intent to complete his mission. This veteran later suffered symptoms consistent with PTSD and traumatic brain injury but had to establish proof of the tank accident in order to claim the benefits he was entitled to, a task made more difficult by the fact that the incident went unreported when it happened, and he did not seek medical treatment at the time.

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37 Story obtained from Clinical Law Professor Patty Roberts, director of William and Mary’s Puller Clinic.
The lack of contemporaneous reporting of injuries, illnesses, and incidents during active duty service will make it harder for veterans to prove the nexus required between the claimed disability and their service, leading to claims that are repeatedly denied, as well as appeals and further bureaucratic impediments that could be ameliorated through premeditated prevention. Another example of a lack of evidence interfering with a veteran’s claim for benefits can be seen in the case of a Gulf War veteran who was responsible for picking up the deceased along the “Highway of Death.” Proving these horrific war time experiences to support a claim for PTSD will be challenging, as his military specialty involved administrative duties rather than more traditional combat support activities.\(^38\) Additionally, a Vietnam veteran who was part of a flight crew that spent months removing the deceased from combat zones on a daily basis is fighting the VA because his records do not support the fact that he was ever in country in Vietnam.\(^39\) Contemporaneous record-keeping documenting these activities and any symptoms suffered at the time would aid both veterans in proving that they experienced the traumatic events, and that those events are related to the PTSD claims now being made to the VA.

V. Conclusion

The reform suggested in this proposal is not only a step towards VA and the DoD better fulfilling their duties towards veterans, but it is also a necessary change that will help improve the antiquated and inefficient VA system. To allow the current system to continue unreformed is to neglect the fair treatment of our nation’s veterans who suffer from service-connected disabilities. This proposal offers a simple solution to change specific aspects of military culture and better prepare service members for their eventual separation or retirement, as well as potential service-connected disability compensation claims. This educational reform while

\(^{38}\) Story obtained from Clinical Law Professor Patty Roberts, director of William and Mary’s Puller Clinic.

\(^{39}\) Id.
service members are still on active duty will facilitate a more efficient claims process for both veterans and VA, and open the door for further reform. It is a first step towards a system that fully and efficiently accomplishes all of the goals VA intends to meet in service to the our nation’s veterans, by increasing awareness regarding the necessity of nexus evidence while the service member is still serving and has access to that evidence.