

Critics: Army holding down disability ratings

By Kelly Kennedy - Staff writer
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The Army is deliberately shortchanging troops on their disability retirement ratings to hold down costs, according to veterans' advocates, lawyers and service members.

"These people are being systematically underrated," said Ron Smith, deputy general counsel for Disabled American Veterans. "It's a bureaucratic game to preserve the budget, and it's having an adverse affect on service members."

The numbers of people approved for permanent or temporary disability retirement in the Navy, Marine Corps and Air Force have stayed relatively stable since 2001.

But in the Army — in the midst of a war — the number of soldiers approved for permanent disability retirement has plunged by more than two-thirds, from 642 in 2001 to 209 in 2005, according to a Government Accountability Office report last year. That decline has come even as the war in Iraq has intensified and the total number of soldiers wounded or injured there has soared above 15,000.

The Army denies there is any intentional effort to push wounded troops off the military rolls. But critics say many troops being evaluated for possible disability retirement accept the first rating they are offered during their first informal board — but that if they were to request a formal board, and then appeal the decision of that board, they would receive higher ratings.

The system is complicated — "unduly so," the Rand Corp. think tank said in a 2005 report — and the counselors who advise troops often have insufficient training or experience. Service members also assume that after months spent in a war zone, the military will look out for them, critics say.

Those who try to navigate the process beyond their initial evaluation — to include hundreds of combat veterans in limbo at Walter Reed Army Medical Center in Washington — face long waits, lost paperwork and months or even years away from home as they try to complete the process. If they receive a rating of above 30 percent, they receive disability retirement pay, medical benefits, and commissary privileges. Those rated under 30 percent receive severance pay and no benefits.

Many eventually give up and take their chances with the Department of Veterans Affairs, which may give a higher rating for the same disability.

But under the separate disability payment systems of the Defense Department and the VA, a higher VA rating does not necessarily translate into more money — and forgoing military disability retirement also means giving up lifetime commissary and exchange privileges, military health care and other benefits.

While the number of soldiers placed on permanent disability retirement has declined in the past five years, the number placed on temporary disability retirement — with medical conditions that officials rule might improve so they can return to work over time or worsen to the point that they must be permanently retired — has increased more than fourfold, from 165 in 2001 to 837 in 2005.

Troops on temporary disability leave convalesce for 18 months while receiving reduced basic pay. After 1½ years, they are reevaluated and either returned to duty, or rated for separation or permanent disability retirement, or sent back to temporary disability for another 18 months — up to five years.

Along with paying them reduced wages during that time, the eventual reevaluation often leads to downward revisions in their disability ratings — and lower disability payments.

Service members' conditions must be deemed stable before they receive a permanent disability rating, unless they are rated at less than 30 percent. In that case, they are discharged with severance pay — whether they are in stable condition or not. If their conditions then worsen, they'll receive no more money from the military.

Compared to the overall size of the defense budget, disability retirement costs are relatively small. In 2004, the military paid more than \$1.2 billion in permanent and temporary disability benefits to 90,000 people, the GAO said.

That does not include the costs of lump-sum severance pay — up to 24 months of basic pay — given to 11,174 disabled troops that year in lieu of disability retirement pay. The Pentagon was unable to provide data on severance costs, the GAO said.

Officials with the Army's Physical Disability Agency say there is no ploy to save money and that troops going through the process are treated well.

"There is absolutely no attempt on the part of the Army or this agency to deny soldiers any disability benefits or to push them off on the VA," said Col. Andy Buchanan, the agency's deputy commander.

Adjudicators "are committed to ensuring all disability decisions are made fairly and accurately and based on the evidence in the soldier's medical record," he said. "We have never received any guidance, official or otherwise, from anywhere within DoD to limit findings for budgetary or other reasons."

In 2005, Ellen Embrey, deputy assistant secretary of defense for force health protection and readiness, told House lawmakers the reason for the comparatively large numbers of troops placed on temporary disability was actually to keep end strength up. A premature medical evaluation board decision, she said, "may negatively impact the individual's ability to continue serving."

'I COULDN'T BELIEVE IT'

Smith said he began hearing tales about two years ago of service members who said they were not getting proper disability ratings based on the VA Schedule for Rating — the document used by both the military services and the VA to determine percentage ratings for disabilities, which in turn sets compensation rates.

"I finally decided to take on a case myself," Smith said. "It's been a while since I took a case."

He found an Army captain whose radial nerve in his right arm had been destroyed in Iraq — the same injury that has left Bob Dole, the World War II veteran and former Kansas senator, unable to use his arm to do more than hold a pen.

Smith followed the captain through the physical evaluation board process. He said that under the ratings schedule, this was an easy call: 70 percent disability. But at his first informal medical evaluation board, the captain initially was offered just 30 percent, and he had to fight to raise it to 60 percent through a subsequent formal evaluation board and then a final appeal.

"His first offer ... I couldn't believe it," Smith said. "I was just incensed."

Many troops accept the first rating offered them at their initial informal evaluation board, Smith said. "Soldiers are trained. When the evaluation board says, 'This is what you get,' the soldiers say, 'Yes sir.' A lot of people don't appeal."

Dennis Brower, legal advisor for the Army's Physical Disability Agency, acknowledged as much, saying only 10 percent of soldiers request a formal board.

But when the Army wouldn't budge on raising the captain's rating above 60 percent, Smith took the case a step beyond where most soldiers can go.

"I called the adjutant general and said I wanted a meeting," Smith said — and added that if he didn't get one, he was "going to Congress."

That was in January. He got his meeting. He has demanded that the Army's Physical Disability Agency look for patterns of incremental increases in disability ratings as troops move through the process, and how closely their ratings match what the VA schedule mandates.

Smith is still waiting to hear back, but suspects the pattern will show that a large proportion of troops with less than 20 years of service — who don't already qualify for retirement — are rated at under 30 percent, the threshold for being considered for disability retirement pay and all other military benefits that come with it. Many of those troops instead receive one-time, lump-sum disability severance pay that is much lower in value than lifetime retirement compensation.

Pentagon spokesman Marine Maj. Stewart Upton said the disability retirement process is being looked at.

“We are in the midst of a business-process review that will generate improvements to program effectiveness, including timeliness goals for processing cases and standard definitions of start and end points as well as other metrics to ensure that progress can be accurately measured over time against common metrics,” Upton said.

“We are especially concerned with a balance of what constitutes prompt adjudication, while maintaining reasonable flexibility within the system to ensure recoveries are not inappropriately rushed.”

FIT FOR DUTY?

Army Lt. Col. Mike Parker was diagnosed with reactive arthritis, which causes painful swelling and eventual calcification of the joints. He was put on drugs that suppress his immune system, but kept on active duty — even though his medication must be refrigerated and he must remain near specialized medical care.

Without a suppressed immune system, there is no chance of him being deployed, much less to a combat zone. “If I get shot, it’s not good,” he said.

Though pleased that he could continue to serve, he wondered how a medical evaluation board could find him fit. After he talked to a dozen other service members from all branches with similar diagnoses of reactive arthritis or ankylosing spondylitis, he realized they were all evaluated based on different criteria. He produced hundreds of pages of medical records, letters and rulings to support his claims.

Some were handed disability ratings that would provide them with the \$20,000 in drugs that they would need for the rest of their lives, while others were told they had preexisting conditions and given no benefits. Still others — including some with medical evidence proving otherwise — were told that because their diseases had improved and would not worsen, their disability ratings were based on the idea that they had improved from chronic illnesses that, in reality, could worsen.

Parker began making calls — to lawmakers, doctors, veterans’ groups and the media. He sought out troops having problems and offered to help them through the process, piecing together medical paperwork to make sure people got what they deserved.

He said he has seen case after frustrating case of the services ignoring their own rules. For example, an evaluation board is supposed to provide “clear and unerring evidence” for a ruling that a particular condition was preexisting — but Parker said that often does not happen.

He cited a Marine who had received a 10 percent disability rating for post-traumatic stress disorder from a Navy physical evaluation board — and was later rated at 50 percent for the same condition by the VA, using the same ratings schedule and the same medical records.

UNRELATED TO SERVICE

In May 2003, Army Cpl. Richard Twohig was thrown from an armored personnel carrier in Iraq. The 82nd Airborne Division paratrooper landed on his head, said his lawyer, Mark Waple, of Fayetteville, N.C.

Twohig suffers headaches at least once a week that last up to 14 hours, as well as short-term memory loss, and is dependent on pain medication.

“This is well substantiated by his doctors — Army medical doctors,” Waple said.

But his physical evaluation board rated him only 10 percent disabled for another injury because he had no substantive proof the headaches were a result of the accident — even though regulations call for evaluation boards to give troops the benefit of the doubt in such instances.

“I believe it is budget-related,” Waple said. “I believe that there is a feeling the service member should turn to the VA for both their health care and their veterans’ benefits.”

Twohig can’t work because of the disabling headaches, and even if he receives VA benefits, his family has lost its medical insurance. And if a physical evaluation board rules that injuries are not related to service or were preexisting conditions, troops are not eligible for VA benefits, either.

Waple said he began helping soldiers through the physical evaluation board process in the 1970s while he was still an Army lawyer, and he said he has watched the system change since the wars began in Iraq and Afghanistan.

The system “has become less friendly toward service members with compensable decisions on disability” in the past few years, especially since the war in Iraq began, Waple said.

“I think there is a definite bias on the physical evaluation board to medically separate service members with a zero-, 10- or 20-percent disability rating when it ... should be medical retirement.”

Waple said he has about a dozen cases out of Fort Bragg, N.C., similar to Twohig’s.

Army Spc. Ruben Villalpando, who was featured in the Military Times coverage of the problems at Walter Reed, said that since the stories were published, contractors have

fixed the elevator in Building 18 — the facility where troops on “medical hold” are housed — and have inspected each room to determine what needs to be fixed.

But more importantly to him, a Judge Advocate General lawyer looked at his case after he filed a complaint that he received no disability rating because his depression was ruled to have existed prior to his enlisting.

Villalpando said he became depressed because his cousin, a Marine, was electrocuted while they were both serving in Iraq. He has been at Walter Reed for just over a year.

“The JAG wanted to know how they knew it was existing prior to service if they didn’t have my medical records,” Villalpando said.

He has appealed that decision, and his appeal is still pending. “I’m keeping my fingers crossed,” he said.

A COMPLICATED PROCESS

Brower, the Army disability agency’s legal advisor, said part of the problem is that service members don’t understand how the process works. For example, he said a soldier who carries a notepad because of short-term memory loss will not be rated for that disability because he can function. But if he loses a foot, he would be rated for that.

“There’s no need to compensate” for the short-term memory loss because it “didn’t end your military career,” he said. “The foot did. We compensate for the loss of a career.”

And Upton said soldiers have plenty of opportunity to appeal.

“Service members are afforded due process to ensure their cases and concerns can be fairly considered whichever direction they choose,” he said. “Service members also have rights of appeal at specific points in the process should they disagree with their rating.”

Buchanan, the Army Physical Disability Agency’s deputy commander, said the system is not as bad as government reports have led people to believe.

“It really is a fair process,” he said. “It’s wide open. We have nothing to hide.”

Buchanan also said he had “no visibility” on the costs related to disability retirement pay, so he doesn’t know if the budget is going up or down.

He said he gives medical evaluation board adjudicators one instruction:

“Do the right thing. That’s the guidance I give them.”