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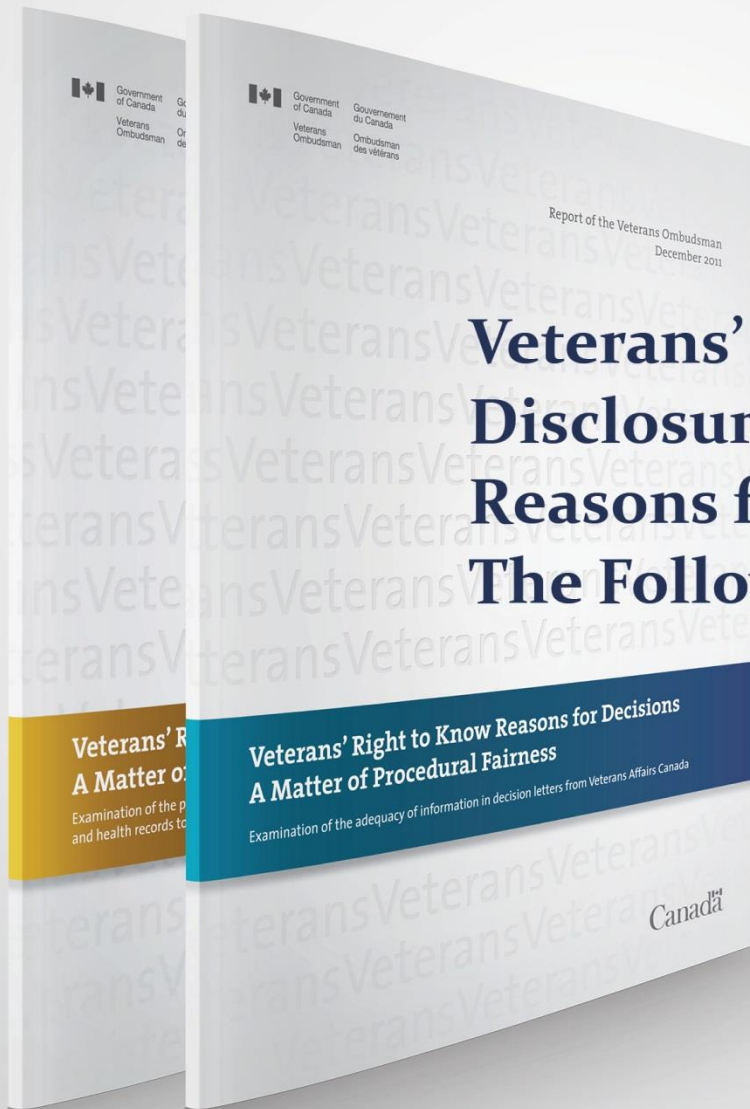
Gouvernement du Canada

Veterans Ombudsman

Ombudsman des vétérans

VETERANS OMBUDSMAN

JUNE 2015



Veterans' Right to Disclosure and to Know Reasons for Decisions: The Follow-up Report

Veterans' Right to Know Reasons for Decisions: A Matter of Procedural Fairness

Examination of the adequacy of information in decision letters from Veterans Affairs Canada

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Canada

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MESSAGE FROM THE OMBUDSMAN

I embarked on the pursuit of procedural fairness for Veterans at the onset of my mandate and I am therefore pleased to publish the fifth and final report in this series, *Veterans' Right to Disclosure and to Know Reasons for Decisions: The Follow-up Report*. This combined report assesses the implementation of the recommendations put forth in *Veterans' Right to Know Reasons for Decisions: A Matter of Procedural Fairness*¹, produced in 2011, and *Veterans' Right to Disclosure: A Matter of Procedural Fairness*², produced in 2012. These reports identified areas of improvement related to the disability application and adjudication process at Veterans Affairs Canada (VAC).

The assessment found, after analysing a valid sample of disability benefit decision letters, that noteworthy progress has been made in the implementation of the recommendations made to VAC. Although seeing such progress towards ensuring procedural fairness for Veterans is encouraging, more can still be done.

I also urge VAC to consider the timely implementation of all the recommendations. In particular, priority should be given to implementing the recommendation pertaining to providing applicants with a copy of the records and all other information that will be considered by adjudicators in making decisions on disability benefit applications. Such changes would reflect VAC's commitment to improve the quality of its services and bring the Department one step closer to excellence in service delivery.

My team and I will continue to monitor the Department's progress and we encourage VAC to adopt a Veteran-centric approach when providing benefits and services to Veterans and their families. This will undoubtedly lead to greater procedural fairness for those who sacrificed their well-being for our country.

¹ Office of the Veterans Ombudsman, 2011. *Veterans' Right to Know Reasons for Decisions: A Matter of Procedural Fairness*. Source: <http://www.ombudsman-veterans.gc.ca/pdfs/reports/Reason-Raison-2011-12-eng.pdf>

² Office of the Veterans Ombudsman, 2012. *Veterans' Right to Disclosure: A Matter of Procedural Fairness*. Source: <http://www.ombudsman-veterans.gc.ca/pdfs/reports/disclosure-divulgateion-11-2012-eng.pdf>

MANDATE OF THE VETERANS OMBUDSMAN

The Office of the Veterans Ombudsman (OVO), created by Order in Council³, works to ensure that Veterans, serving members of the Canadian Armed Forces (CAF) and the Royal Canadian Mounted Police (RCMP), as well as other clients of VAC, are treated respectfully, in accordance with the *Veterans Bill of Rights*, and receive the services and benefits that they require in a fair, timely and efficient manner.

The OVO addresses complaints, emerging and systemic issues related to programs and services provided or administered by VAC, as well as systemic issues related to the Veterans Review and Appeal Board.

The Veterans Ombudsman is an independent and impartial officer who is committed to ensuring that Veterans and other clients of VAC are treated fairly. The Veterans Ombudsman measures fairness in terms of **adequacy** (Are the right programs and services in place to meet the needs?), **sufficiency** (Are the right programs and services sufficiently resourced?), and **accessibility** (Are eligibility criteria creating unfair barriers, and can the benefits and services provided by VAC be accessed quickly and easily?).

³ Order in Council P.C. 2007-530, April 3, 2007. Source: <http://www.ombudsman-veterans.gc.ca/eng/about-us/ombudsman/order>

VETERANS BILL OF RIGHTS

The *Veterans Bill of Rights*⁴ applies to all clients of Veterans Affairs. It states:

“You have the right to:

- Be treated with respect, dignity, fairness and courtesy.
- Take part in discussions that involve you and your family.
- Have someone with you for support when you deal with Veterans Affairs.
- Receive clear, easy-to-understand information about our programs and services, in English or French, as set out in the *Official Languages Act*.
- Have your privacy protected as set out in the *Privacy Act*.
- Receive benefits and services as set out in our published service standards and to know your appeal rights.

You have the right to make a complaint and have the matter looked into if you feel that any of your rights have not been upheld.”

⁴ *Veterans Bill of Rights*. Source: <http://www.veterans.gc.ca/eng/about-us/veterans-bill-of-rights/vbor>

REPORT SUMMARY

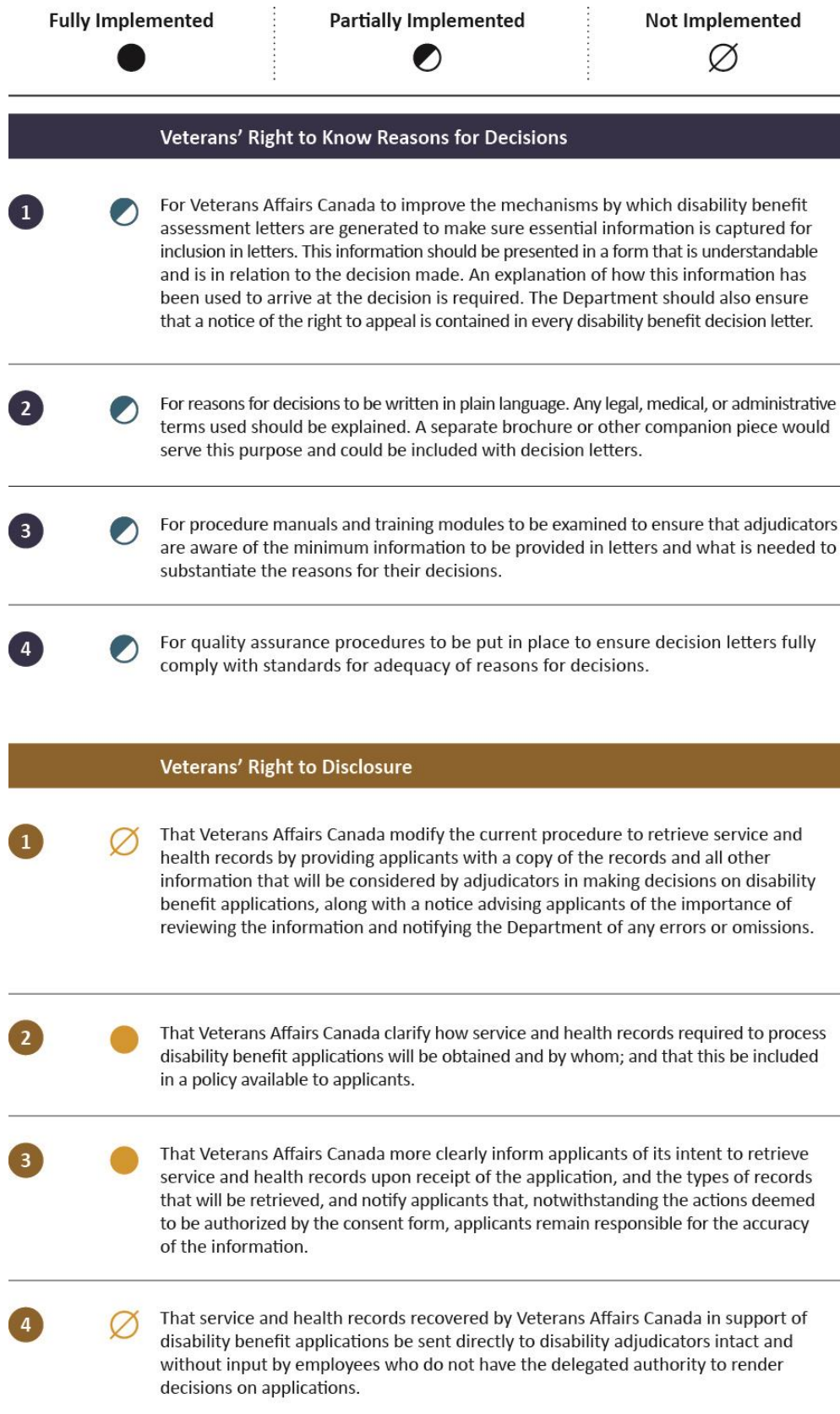
In *Veterans' Right to Know Reasons for Decisions* and *Veterans' Right to Disclosure*, the Veterans Ombudsman made recommendations to VAC relating to issues of procedural fairness in the disability application and adjudication process. Together, these two reports made a total of eight recommendations that were based on an examination of disability benefit decision letters and an analysis of legislation, regulations, policies and business processes relating to Veterans' disability benefits.

This Follow-up Report is an assessment of the implementation of these recommendations with the purpose of evaluating whether or not they have been addressed and, if so, to what degree.

To carry out this evaluation, the OVO reviewed a statistically-valid sample of 342 disability benefit decision letters on the top five claimed medical conditions (Post-traumatic Stress Disorder, Hearing Loss, Osteoarthritis of the Knee, Tinnitus, and Lumbar Disc Disease) dated between January 2013 and January 2015. Additionally, the OVO reviewed VAC's policies, procedures and business processes related to the processing and adjudication of disability benefits as they pertain to decision letters and the disclosure of evidence used to render those decisions.

This Follow-up Report found that of the eight recommendations made in the original two reports, two have been fully implemented, four have been partially implemented, and two have not been implemented. While progress has been made, the Ombudsman is hopeful that through the Veteran-centric Communications Task Force, which is examining how the Department communicates with Veterans, the concerns identified in this report will be addressed and the recommendations fully implemented. This will ensure that Veterans are aware of the information being used to make a decision and will provide them sufficient reasons for the decisions being rendered on their disability benefit applications. These changes would also be consistent with the Government of Canada's commitment to a Veteran-centric approach to disability benefits and excellence in service delivery.

FIGURE 1: IMPLEMENTATION PROGRESS OF THE RECOMMENDATIONS



METHODOLOGY

The Ombudsman's reports, *Veterans' Right to Know Reasons for Decisions* and *Veterans' Right to Disclosure*, together made eight recommendations to the Department to make disability benefit application and adjudication processes and procedures procedurally fair.

The purpose of this Follow-up Report is to determine the extent to which the Department has implemented the recommendations made in each report. In order to accomplish this, the OVO revised the methodology from the original reports; therefore, no comparison between *Veterans' Right to Know Reasons for Decisions* and *Veterans' Right to Disclosure* and this Follow-up Report will be made.

The OVO reviewed 342 disability benefit decision letters on the top five claimed medical conditions (Post-traumatic Stress Disorder, Hearing Loss, Osteoarthritis of the Knee, Tinnitus, and Lumbar Disc Disease) dated between January 2013 and January 2015.⁵

Consistent with the methodology of *Veterans' Right to Know Reasons for Decisions*, which limited the review to assessment decisions only, the 34 decisions that dealt solely with entitlement (service relationship) were removed. The remaining 308 letters contained decisions concerning the assessment of the claimed condition (the percentage assigned to a disability, calculated by adding together the Medical Impairment Rating to the Quality of Life Rating). Of these, the sample contained 271 decision letters in English (88 percent) and 37 in French (12 percent). In order to analyze these decisions, the OVO created the *Reasons for Decisions Evaluation Guide*, by which to evaluate the adequacy of reasons given in decisions ([Annex A](#)).

To ensure consistency in the evaluation of decision letters, a test sample was done by each reviewer on the same letters and the evaluations were then compared. In the test sample, the OVO found that none of the decision letters contained information relating to the determination of the Quality of Life Rating.⁶ Therefore, for the purpose of this review, and to accurately evaluate any progress made towards implementing the recommendations, the OVO decided that the Medical Impairment Rating⁷ would be the basis for evaluating the Department's assessment of claimed conditions. If the OVO were to consider

⁵ Sample calculated to have a 95 percent confidence interval.

⁶ Quality of Life Rating: A level assigned by an adjudicator to an applicant that measures the effect an injury has on quality of life based on criteria found in Table 2.1 of the Table of Disabilities.

⁷ Medical Impairment Rating: The percentage assigned to an applicant's medical condition by the adjudicator when medical evidence included with the disability benefits application is tested against the criterion in the appropriate chapter of the Table of Disabilities.

the Quality of Life Rating in addition to the Medical Impairment Rating in evaluating the decision letters related to the first recommendation in *Veterans' Right to Know Reasons for Decisions*, none of the decision letters would have provided sufficient reasons for decisions. As the Quality of Life Rating is a critical factor in the determination of a Veteran's disability assessment, it is relevant to the remaining recommendations.

This Follow-up Report also reviewed VAC's policies, procedures and business processes related to the processing and adjudication of disability benefits as they pertain to decision letters and the disclosure of evidence used to render those decisions.

ANALYSIS OF RECOMMENDATION IMPLEMENTATION

VETERANS' RIGHT TO KNOW REASONS FOR DECISIONS

It is noted in the Veterans Ombudsman's December 2011 Report, *Veteran's Right to Know Reasons for Decisions*, that:

*"The complexity of the adjudication process for disability benefits and methodology used means that there can be no intuitive understanding on the part of the Veteran as to how his or her application was processed.... Explaining what evidence [is] considered and how such tools [are] used to arrive at a decision is vital if Veterans are to understand decisions and how they were made."*⁸

Further, the Ombudsman informed the Department of Veterans Affairs that:

*"It is not sufficient for decision-makers simply to outline applicable statutory provisions and the evidence and arguments, and then to state their conclusions. Good reasons for decisions do require the listing of evidence considered in rendering a decision but that does not reveal the rationale for the decision. For each conclusion of fact, law and policy relevant to the decision, the reasons should establish a rational connection between the evidence presented and the conclusions reached by the decision-maker. The decision and the reasons supporting it must then be communicated clearly."*⁹

This Follow-up Report focuses on reviewing the four recommendations made in the original Report to determine what progress has been made by the Department.

RECOMMENDATION 1:

"For Veterans Affairs Canada to improve the mechanisms by which disability benefit assessment letters are generated to make sure essential information is captured for inclusion in letters. This information should be presented in a form that is understandable and is in relation to the decision made. An

⁸ Office of the Veterans Ombudsman, 2011. *Veterans' Right to Know Reasons for Decisions: A Matter of Procedural Fairness*, pg 10. Source: <http://www.ombudsman-veterans.gc.ca/pdfs/reports/Reason-Raison-2011-12-eng.pdf>

⁹ Ibid. pg. 18.




explanation of how this information has been used to arrive at the decision is required. The Department should also ensure that a notice of the right to appeal is contained in every disability benefit letter.”

Partially implemented – In response to the Ombudsman’s recommendation, the Department completed the implementation of a new letter writing system and initiated format revisions to 120 disability benefit letter templates.

For the period between January 2013 and January 2015, the OVO reviewed 308 disability benefit decision letters. Based on the evaluation criteria in the *Evaluation Guide – Reasons for Decisions (Annex A)*, the OVO found the following (Figure 2):

- 101 decisions (33 percent) gave no reason for the Department’s decision;
- 91 decisions (29 percent) gave partial reasons for the Department’s decision; and
- 116 (38 percent) gave sufficient reasons for the Department’s decision.

FIGURE 2 – PROVISION OF REASONS FOR DECISIONS TO DISABILITY BENEFIT APPLICANTS (JANUARY 2013 TO JANUARY 2015)

No Reasons provided	Partial Reasons provided	Sufficient Reasons provided
		
January to December 2013		
67	30	42
January to December 2014		
32	52	69
January 6 to January 19 2015		
2	9	5
Total Number of Decision Letters		
101	91	116

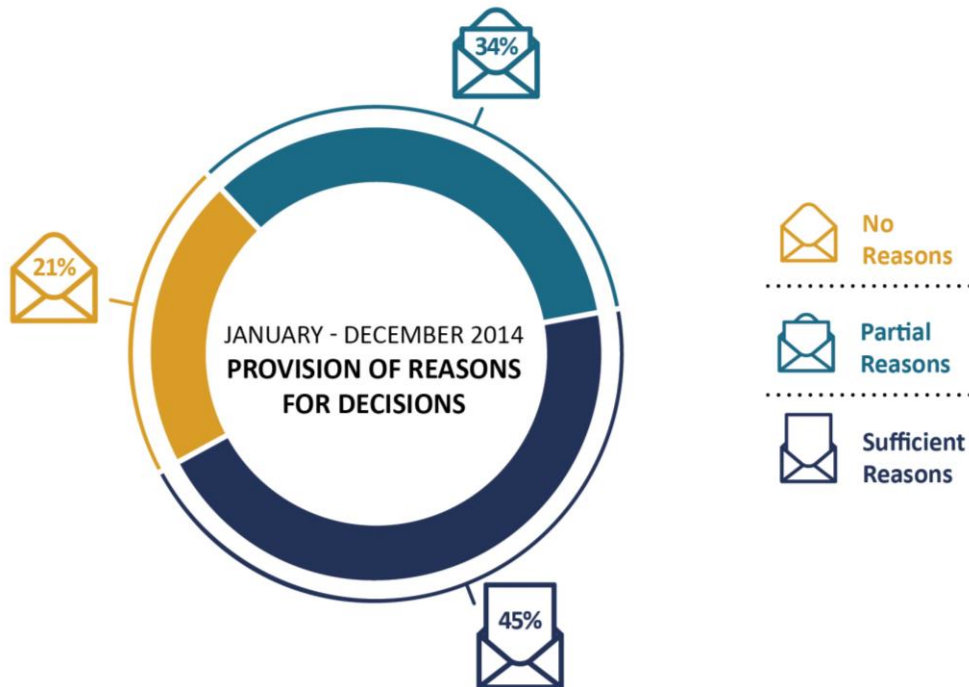
In 2013 (Figure 3), 48 percent of the letters reviewed provided no reason for the decision, 22 percent provided partial reasons and 30 percent provided sufficient reasons.

FIGURE 3 – PROVISION OF REASONS FOR DECISIONS TO DISABILITY BENEFIT APPLICANTS – JANUARY TO DECEMBER 2013



During 2014 (Figure 4), the percentage of letters with no reason fell by more than a half to 21 percent and the letters providing partial or sufficient reasons increased to 34 percent and 45 percent respectively.

FIGURE 4 – PROVISION OF REASONS FOR DECISIONS TO DISABILITY BENEFIT APPLICANTS – JANUARY TO DECEMBER 2014



While there was a 15 percent increase in the number of decisions providing sufficient reasons from 2013 to 2014, our review found that 55 percent of letters produced in 2014 still lacked sufficient reasons.

Since the review period only included one month from 2015 (16 letters reviewed), there was insufficient data to report on the Department's performance for this year.

In addition, the OVO found that over the selected review period, the Department improved the overall format of decision letters and had consistently included a notice of the applicant's right to appeal the decision.

The assessment portion of the disability benefit decision contains two components: the Medical Impairment Rating and the Quality of Life Rating.

The Medical Impairment Rating is determined by a Disability Benefit Adjudicator who weighs the medical evidence provided by the applicant against the Table of Disabilities criteria. For example, Table 17.11 of the Table of Disabilities¹⁰ provides Medical Impairment Ratings depending on the severity of an applicant's knee condition. According to Table 17.11, if the medical evidence submitted indicates the Veteran's knee has "Essentially normal range of motion, but pain now present on a daily basis and/or with movement", the adjudicator would assign a Medical Impairment Rating of four percent for that condition ([Annex B](#) contains an excerpt of Table of Disabilities Table 17.11).

The Quality of Life Rating is determined by a Disability Benefit Adjudicator who weighs the information provided by the Veteran in the Quality of Life Questionnaire or other relevant documents with the criteria set out in Table 2.1 of the Table of Disabilities.¹¹ Based on the information provided by the applicant, Table 2.1 will determine whether the Veteran's quality of life is mildly affected (Level 1), moderately affected (Level 2) or extremely affected (Level 3) by the condition being claimed.

The Adjudicator will then use the Quality of Life level determined in Table 2.1 and the Medical Impairment Rating (example above) and cross-reference them using Table 2.2 of the Table of Disabilities. This value represents the applicant's disability assessment ([Annex C](#) contains an excerpt of Table 2.1 and [Annex D](#) contains an excerpt of Table 2.2 of the Table of Disabilities).

¹⁰ Veterans Affairs Canada, 2006. 2006 Table of Disabilities. Chapter 17 – Musculoskeletal Impairment. Source: <http://www.veterans.gc.ca/eng/services/after-injury/disability-benefits/benefits-determined/table-of-disabilities/ch-17-2006#t11>

¹¹ Veterans Affairs Canada, 2006. 2006 Table of Disabilities. Chapter 2 – Quality of Life Rating Chapter. Source: <http://www.veterans.gc.ca/eng/services/after-injury/disability-benefits/benefits-determined/table-of-disabilities/ch-02-2006#t01>

Of the 308 decision letters reviewed, the majority¹² (62 percent) were deficient in two areas:

- The decision letters did not fully explain the assessment (the percentage of disability, calculated by adding together the Medical Impairment Rating and the Quality of Life Rating); and/or
- The decision letters did not fully explain how the evidence led to the assessment decision.

These decision letters did not include a description of the Table of Disabilities criterion (e.g. normal range of motion, but pain now present on a daily basis and/or with movement) relevant to the applicant's condition despite the description being included in the decision letter templates. The Department's *Disability Adjudicator Reference Manual*¹³ notes that including the 2006 Table of Disabilities criteria is an "optional" section of the disability decision letters.

The new letter templates could meet what the Veterans Ombudsman considers a minimum standard for providing reasons for decisions by including the Table of Disabilities criterion. Without the description of the Table of Disabilities criterion, the decision letter does not explain to the applicant how the information leads to the specific rating given. Providing a reference to the Table of Disabilities and citing the table number without detailing what that table says or how to find it does not provide sufficient reasons for the decision.

While progress has been made by the Department in regards to decision letter templates and including an applicant's right to appeal, the Department does not differentiate between listing information in support of a decision and providing reasons for a decision in these templates.

RECOMMENDATION 2:

"For reasons for decisions to be written in plain language. Any legal, medical, or administrative terms used should be explained. A separate brochure or other companion piece would serve this purpose and could be included with decision letters."

Partially Implemented – In response to the Ombudsman's recommendation, the Department revised the decision letter templates and began including a document entitled, *Fact Sheet – Hearing Loss Disabilities for Veterans Affairs Canada (VAC) Purposes* ([Annex E](#)) with some decisions. The fact sheet is informative and helpful in describing what constitutes a hearing loss disability for disability benefits purposes, and how the level of entitlement (expressed in fifths) is determined based on the degree of

¹² Those providing no or partial reasons.

¹³ Veterans Affairs Canada (2013). *Disability Adjudicator Reference Manual*. Unpublished internal document.

hearing loss at the time of the Veteran's release from service. However, the inclusion of this type of companion piece is limited to hearing loss decisions and does not include information regarding how the Medical Impairment and Quality of Life Ratings are determined.

For example, all the decision letters reviewed state that the Quality of Life Rating was determined by using the *Quality of Life Questionnaire* completed by the Veteran and/or the information on the Veteran's file and that the Rating is based on a referenced table from the 2006 Table of Disabilities (e.g. Table 2.1 and 2.2 of the Table of Disabilities).¹⁴ The decision letters do not explain what the 2006 Table of Disabilities Quality of Life criteria are or what information collected from the questionnaire, or found elsewhere in the Veteran's file, led the adjudicator to that particular rating.

Further, the decision letters do not provide instructions on how to access the Table of Disabilities to learn more about the Table of Disabilities criteria, nor is there a separate brochure or other companion piece included with the decision to provide additional details to help the applicant understand why a particular rating was selected. Similar observations were made in relation to the Medical Impairment Rating in that decision letters that were considered to provide partial or no reasons, only provided the table number for the Table of Disabilities. These decisions did not include the specific Table of Disabilities' criteria that led to the particular Medical Impairment Rating chosen by the adjudicator to match the medical evidence provided by the applicant in support of his or her claim.

The Table of Disabilities criteria for both the Medical Impairment and Quality of Life Ratings should be referenced to ensure that sufficient reasons for the decisions have been provided. As recommended by the Ombudsman in 2012, a brochure or other companion piece should be provided, which would include additional information about the Table of Disabilities' criteria to help the applicant understand how the adjudicator arrived at a decision.

As mentioned in the Methodology section of this Report, the OVO found that no decision letter contained information relating to the determination of the Quality of Life Rating. The adjudication training manual provides the option for Medical Impairment criteria to be included in letters, but does not include any reference to the Quality of Life rating criteria. This could be remedied by putting the descriptions for the Quality of Life criteria in all letters, or by providing a brochure or companion piece.

RECOMMENDATION 3:

¹⁴ QOL ratings add from 1 – 5 percent for medical impairments below 21 percent; 3 – 11 percent for medical impairments between 21 percent and 50 percent; and between 6 – 20 percent to medical impairments that are 51 percent or higher.

“For procedure manuals and training modules to be examined to ensure that adjudicators are aware of the minimum information to be provided in letters and what is needed to substantiate the reasons for their decisions.”

Partially Implemented – In response to the Ombudsman’s recommendation, the Department revised the decision letter chapter of the *Disability Adjudicator Reference Manual*. The manual now specifies what information to include in decision letters. Training sessions were also provided to decision-makers in April 2012, which highlighted the requirements detailed in the revised manual.

The entitlement portions of decision letters were not examined in the initial 2012 report and were therefore not a focus in this Follow-up Report. However, in the course of reviewing decision letters, the OVO observed that the Department does provide clear reasons to support the entitlement portion of decisions (i.e. the degree to which the claimed condition is related to service). For the entitlement portion of the decision, the manual instructs the adjudicator to provide the following information:

- **Key Evidence** (a list of documents that were reviewed by the adjudicator);
- **Reasons for Entitlement** (contains subheadings)
 - Medical Diagnosis (the date the diagnosis of the claimed condition was confirmed by a medical professional);
 - Relationship to Service (a chronological list of service-related factors related to the claimed condition);
- **Our Conclusion** (provides a statement as to whether or not the evidence in the previous sections led the adjudicator to conclude to what degree the claimed condition is related to service).¹⁵

This format provides a logical flow of the evidence considered for entitlement and how the evidence led the adjudicator to the entitlement portion of the decision. The assessment portion of decisions follows a similar format, but only requires a listing of evidence considered by an adjudicator and does not include a section to explain how the evidence, relating to the Quality of Life and Medical Impairment criteria, led to the decision.

Furthermore, the OVO found that the manual states that the inclusion of the 2006 Table of Disabilities criteria for the Medical Impairment Rating is optional. As a result, without clearly stating the Table of Disabilities’ criteria against which the applicant’s evidence was weighed, full reasons for the decision cannot be considered to have been provided. The same is true for the Quality of Life Rating. In order to

¹⁵ Veterans Affairs Canada (2013). *Disability Adjudicator Reference Manual*, pg. 3. Unpublished internal document.

explain how the adjudicator arrived at the Quality of Life Rating, a description of the 2006 Table of Disabilities Quality of Life criteria should be provided. The revised chapter in the *Disability Adjudicator Reference Manual* does not instruct the adjudicator to provide the Quality of Life criteria, nor is it mentioned as an option.

RECOMMENDATION 4:

“For quality assurance procedures to be put in place to ensure decision letters fully comply with standards for adequacy of reasons for decisions.”

Partially implemented – In response to the Ombudsman’s recommendation, the Department has advised that they have put in place enhanced quality control measures to monitor decision letters.

The new quality assurance methodology requires that the Disability Adjudication Section undertake a formal quality review of first application decisions. The goal of this process is to identify areas of concern that may require training/retraining and/or the revision of procedures/guidelines. Files are selected at random from the completed decisions of the previous month and include a mix of both favourable and unfavourable decisions. A checklist is used by the Adjudication Team Leads to assess the quality of written decisions.

The checklist is focused on the technical aspects of the decision letter to verify that the correct medical diagnosis, internal medical code, legislative reference, effective date, applicant information, writing style and notice of appeal rights are included. The checklist also prompts the reviewer to verify that critical evidence is listed, that the findings are supported by the evidence and that reasons have been provided for the assessment.

As noted in the Ombudsman’s December 2011 Report:

*“Providing information to support a decision is fundamentally different to providing a reason for a decision. This difference seems not to be understood by the Department as all letters examined did not apply any analysis to the information they contained to clearly explain the decisions”.*¹⁶

To date, the practice of listing information considered in making the decision continues, rather than providing an analysis of how that information was used to arrive at the decision. As outlined in the analysis of the first recommendation, 55 percent of the letters reviewed from 2014 did not provide an

¹⁶ Veterans Ombudsman, 2011. *Veterans’ Right to Know Reasons for Decisions: A Matter of Procedural Fairness*, pg. 5. Source: <http://www.ombudsman-veterans.gc.ca/eng/reports/reports-reviews/reason-raison>

explanation of how the listed evidence led to the assessment decision. Also, as noted in Recommendation 3, the *Disability Adjudicator Reference Manual* lists the inclusion of the Table of Disabilities criteria as optional when the provision of the criteria is essential in order to adequately communicate reasons for decisions.

In addition to reviewing the letters to determine whether sufficient reasons have been provided, the OVO noted only a small number of other quality issues with the letters. The OVO observed that 21 of the 308 decisions (7 percent) had grammatical errors, formatting errors, or various inaccuracies in content. Examples include: incorrect references to the Table of Disabilities, calculation errors, blank pages in the middle of letters as well as spelling errors.

Further improvements related to updating procedural manuals and providing additional training to decision-makers on the difference between listing evidence and providing reasons, would improve the quality of disability benefit decision letters.

VETERANS' RIGHT TO DISCLOSURE

The Veterans Ombudsman's Report, *Veterans' Right to Disclosure* states that:

"The principles of procedural fairness of relevance to the application process are tied to the right to a fair hearing and an applicant's participation rights."¹⁷

Together, these rights ensure that applicants are aware of the information that will be considered by adjudicators (the right to disclosure) and ensure that adjudicators remain unbiased and consider only relevant information (the right to a fair hearing).¹⁸

Veterans' Right to Disclosure made four recommendations to improve participation rights for Veterans. The Minister responded to this Report with the *Right to Fairness Implementation Plan*.¹⁹

This Follow-up Report focuses on the original recommendations to determine what progress has been made by the Department.

RECOMMENDATION 1:

"That Veterans Affairs Canada modify the current procedure to retrieve service and health records by providing applicants with a copy of the records and all other information that will be considered by adjudicators in making decisions on disability benefit applications, along with a notice advising applicants of the importance of reviewing the information and notifying the Department of any errors or omissions."

Not implemented – In response to the Veterans Ombudsman's recommendation, the Deputy Minister noted in correspondence dated October 2012 that the Department disagreed with this recommendation and stated that:

"... VAC's current process is designed to ensure timely decisions are rendered while minimizing the administrative burden on Veterans. Although the Department agrees with the concept of this

¹⁷ Office of the Veterans Ombudsman, 2012. *Veterans' Right to Disclosure: A Matter of Procedural Fairness*, pg. 5. Source: <http://www.ombudsman-veterans.gc.ca/eng/reports/reports-reviews/disclosure-divulgation-11-2012>

¹⁸ Ibid.

¹⁹ Veterans Affairs Canada, 2012. *Right to Fairness Implementation Plan*. Source: <http://www.veterans.gc.ca/eng/about-us/reports/responses-ovo/rights-to-fairness-implementation-plan>

recommendation in ensuring procedural fairness and participation rights; it does raise some administrative consequences, not only for VAC, but for the CAF” ([Annex F](#)).

At the time *Veterans' Right to Disclosure* was released, the Department had entered into a new partnership with Public Works and Government Services Canada to digitize Service Health Records. Since the Department has advanced its efforts in digitizing Service Health Records in the three years following the release of *Veterans' Right to Disclosure*, the Ombudsman believes that if an electronic file is already being created for the adjudicator, there should be no administrative consequence in making a digital copy available to the Veteran.

The Ombudsman maintains that it is procedurally unfair to not provide a copy of a Veteran's Service Health Records to the applicant. As in *Veterans' Right to Disclosure*, the Ombudsman reiterates that:

“... by not disclosing the information that will be reviewed by adjudicators, applicants are denied the opportunity to participate meaningfully in the decision-making process. This lack of knowledge means that applicants do not have the opportunity to provide their own information, for example, by noting or supplying missing information or to challenge information that will be reviewed by the adjudicator, nor do they have the ability to determine whether the adjudicator is only considering relevant information.”²⁰

RECOMMENDATION 2:

“That Veterans Affairs Canada clarify how service and health records required to process disability benefit applications will be obtained and by whom; and that this be included in a policy available to applicants.”

Fully implemented – The Minister of Veterans Affairs, in the *Right to Fairness Implementation Plan*, made a commitment that the Department would more clearly inform applicants of the intent to retrieve Service Health Records at the outset of the application process. This was achieved through revisions to the disability benefit application package, which now includes a section advising that the Department will obtain a copy of the records. Additionally, these changes now inform applicants of how they can obtain copies of their records and how they can make corrections if deemed necessary.

A fact sheet was developed that advises applicants that the Department will obtain the Veteran's Service Health Records and how to request a copy of their records based on their type of service (e.g.

²⁰Office of the Veterans Ombudsman, 2012. *Veterans' Right to Disclosure: A Matter of Procedural Fairness*, pg. 20. Source: <http://www.ombudsman-veterans.gc.ca/eng/reports/reports-reviews/disclosure-divulgation-11-2012>

still-serving CAF, released CAF or RCMP). This fact sheet is available on the Department's website²¹ in PDF format for download.

RECOMMENDATION 3:

“That Veterans Affairs Canada more clearly inform applicants of its intent to retrieve service and health records upon receipt of the application, and the types of records that will be retrieved, and notify applicants that, notwithstanding the actions deemed to be authorized by the consent form, applicants remain responsible for the accuracy of the information.”

Fully implemented – As mentioned in Recommendation 2, the Minister of Veterans Affairs, in the *Right to Fairness Implementation Plan*, made a commitment that the Department would more clearly inform applicants of the intent to retrieve Service Health Records at the outset of the application process. The revised disability benefit application now has a section in the five-page guide that advises applicants that the Department will obtain and review a copy of their Service Health Records as part of their application. As well, Section E of the application packages states:

*“I acknowledge that I have read the SHRs section and the Privacy Notice section of the DB application guide....”*²²

The guide also informs applicants that the *Privacy Act*²³ provides them with the right to request a copy of their government-held personal information and the right to request changes or notations be added to any of this information. The guide further directs applicants to the Access to Information and Privacy (ATIP) section of the appropriate department depending on their service status.

²¹ Veterans Affairs Canada, 2014. Step 2 – What You Need to Apply. Source: <http://www.veterans.gc.ca/eng/services/after-injury/disability-benefits/application-checklist>

²² Veterans Affairs Canada, 2015. Application for Disability Benefits (PEN923), pg. 4. Source: <http://www.veterans.gc.ca/eng/forms/document/493>

²³ *Privacy Act* (R.S.C. 1985, c. P-21)

RECOMMENDATION 4:

“That service and health records recovered by Veterans Affairs Canada in support of disability benefit applications be sent directly to disability adjudicators intact and without input by employees who do not have the delegated authority to render decisions on applications.”

Not implemented – In response to the Ombudsman’s recommendation, the Department issued an operational directive to Disability Adjudicators in February 2013, which reminded them of their responsibilities with respect to reviewing service records and other evidence. As documented in the *Right to Fairness Implementation Plan*, adjudicators were directed to consider the following:

- “Before a negative decision is taken, all documents submitted by a Veteran must be reviewed and factored into the final decision, every time.
- Disability adjudicators must attest to reviewing all documentation submitted by a Veteran before rendering a negative decision.
- Disability adjudicators must render fair decisions as quickly as possible by first reviewing key documents that support the validity of the claim.
- Documents submitted by a Veteran or an official record body shall be given priority status and be considered first, in keeping with our commitment to render fair decisions as quickly as possible.”²⁴

As was the case when the OVO published *Veterans’ Right to Disclosure*, the current process still involves individuals without delegated decision-making authority who select, copy and flag service records.²⁵ As the Ombudsman previously stated:

*“... the practice of ‘flagging’ documents by disability benefits officers, for the purpose of bringing to adjudicators’ attention those documents with the service and health records seemingly relevant to the application, may introduce bias into the decision making process by individuals who do not have the delegated authority to render decisions on applications.”*²⁶

²⁴ Veterans Affairs Canada, 2012. *Right to Fairness Implementation Plan*. Section, 4. Source: <http://www.veterans.gc.ca/eng/about-us/reports/responses-ovo/rights-to-fairness-implementation-plan>

²⁵ Veterans Ombudsman, 2012. *Veterans’ Right to Disclosure: A Matter of Procedural Fairness*, pg. 14. Source: <http://www.ombudsman-veterans.gc.ca/eng/reports/reports-reviews/disclosure-divulgateion-11-2012>

²⁶ Ibid. pg. 22.

CONCLUSION

In evaluating the implementation of the recommendations made in the Veterans Ombudsman's reports, *Veterans' Right to Know Reasons for Decisions* and *Veterans' Right to Disclosure*, the Department has made progress in fully or partially implementing six of the eight recommendations.

In his 2011 and 2012 Reports, the Ombudsman noted concern with how evidence in support of a Veteran's disability benefit application is retrieved and how the outcomes of disability benefit applications are communicated to Veterans once a decision has been made.

Not providing adequate reasons for decisions is a denial of procedural fairness and contrary to legislative requirements under the *Pension Act*²⁷ and the *Canadian Forces Members and Veterans Re-establishment and Compensation Act*.²⁸ In response to the recommendations made in *Veterans' Right to Know Reasons for Decisions*, the Department implemented changes to decision letter templates and procedure manuals. However, as previously noted:

*“Providing information to support a decision is fundamentally different to providing a reason for a decision.”*²⁹

This difference has not been addressed by the Department, as evidenced by the review of decision letters completed between January 2013 and January 2015.

In terms of how evidence is retrieved, by not ensuring the applicant has a copy of the evidence collected on the applicant's behalf, the Department is infringing on the applicant's legislative obligation to substantiate their claims. The Deputy Minister noted that the Department agreed with the concept that a copy of the Service Health Record be provided to the applicant prior to the decision being rendered, but the Department would not be implementing this recommendation due to concerns regarding administrative consequences.

The Ombudsman strongly believes that full implementation of these recommendations (to provide Veterans with a copy of all evidence collected by the Department on their behalf and to improve the reasons provided for disability benefit decisions) would not only ensure that Veterans are being treated

²⁷ *Pension Act* (R.S.C. 1985, c. P-6)

²⁸ *Canadian Forces Members and Veterans Re-establishment and Compensation Act* (S.C. 2005, c. 21)

²⁹ Veterans Ombudsman, 2011. *Veterans' Right to Know Reasons for Decisions: A Matter of Procedural Fairness*, pg. 5. Source: <http://www.ombudsman-veterans.gc.ca/eng/reports/reports-reviews/reason-raison>

with procedural fairness, but would also result in fewer decisions being subject to time-consuming and costly appeals. As was originally stated in *Veterans' Right to Know Reasons for Decisions*:

“Before considering whether an appeal is possible or might be successful, claimants need to know the basis upon which the disability benefit decision was made. Knowing reasons for decisions is critical to making an informed decision about proceeding to the appeal level. A detailed decision letter is the essential source of that information.”³⁰

The Ombudsman is hopeful that through the Veteran-centric Communications Task Force, which is examining how the Department communicates with Veterans, the concerns identified in this report will be addressed and all the recommendations fully implemented.

In closing, the effort spent on ensuring that Veterans are aware of the information being used to make a decision and providing reasons why a decision was made will create better outcomes for Veterans and for the Department. These policy and process changes would also be consistent with the Government of Canada's commitment to a Veteran-centric approach to disability benefits and excellence in service delivery.

³⁰ Ibid. pg. 10.

ANNEX A – REASONS FOR DECISIONS EVALUATION GUIDE

Rating	Criteria
Sufficient Reasons	<ul style="list-style-type: none"> ● Referenced in decision letter: <ul style="list-style-type: none"> ○ Governing legislation (including section) ○ Table of Disabilities (including specific table) ○ Supporting documentation (specific documents are listed) ● Explains the assessment (the Medical Impairment and Quality of Life Ratings) and how the assessment led to the decision.
Partial Reasons	<ul style="list-style-type: none"> ● Referenced in decision letter: <ul style="list-style-type: none"> ○ Governing legislation (including section) ○ Table of Disabilities (including specific table) ○ Supporting documentation (specific documents are listed) ● States the assessment (the Medical Impairment and Quality of Life Ratings) but not how the assessment led to the result.
No Reasons	<ul style="list-style-type: none"> ● Optionally referenced in decision letter: <ul style="list-style-type: none"> ○ Governing legislation ○ Table of Disabilities ○ Supporting documentation ● States the decision.

ANNEX B – TABLE 17.11 – LOSS OF FUNCTION – LOWER LIMB – KNEE ³¹

Rating	Criteria
Nil	<ul style="list-style-type: none"> • Normal range of motion without pain
Four	<ul style="list-style-type: none"> • Essentially normal range of motion, but pain now present on a daily basis and/or with movement
Nine	<ul style="list-style-type: none"> • Intermittent effusions; or • Loss of 15° or more of flexion
Thirteen	<ul style="list-style-type: none"> • Knee unstable* on clinical exam; or • Loss of 10° of extension; or • Flexion no more than 90°
Eighteen	<ul style="list-style-type: none"> • Loss of 15° of extension; or • Two of the following: <ul style="list-style-type: none"> ○ Knee unstable* on clinical exam ○ Loss of 10° of extension ○ Flexion no more than 90°
Twenty-six	<ul style="list-style-type: none"> • All three of the following: <ul style="list-style-type: none"> ○ Knee unstable* on clinical exam ○ Loss of 10° of extension ○ Flexion no more than 90°
Thirty-four	<ul style="list-style-type: none"> • Ankylosis in position of function.
Forty-three	<ul style="list-style-type: none"> • Ankylosis in an unfavourable position; or • A flail** joint

* A clinically unstable knee describes a knee joint that is demonstrated to be unstable by a physician on clinical or operative examination.

** Flail joint is a joint exhibiting abnormal and paradoxical mobility.

³¹ Veterans Affairs Canada, 2006. 2006 Table of Disabilities. Chapter 17 – Musculoskeletal Impairment. Source:
<http://www.veterans.gc.ca/eng/services/after-injury/disability-benefits/benefits-determined/table-of-disabilities/ch-17-2006#t11>

**ANNEX C – TABLE 2.1 – QUALITY OF LIFE LEVEL DETERMINATION
 TABLE³²**

Quality of Life Level	Criteria
Level 1	<p>Mild interference with the ability to carry out the <i>usual and accustomed</i> activities of independent living, recreational and community activities, and/or personal relationships due to the entitled condition or bracketed entitled conditions:</p> <ul style="list-style-type: none"> • Able to perform domestic/household activities on own but may require greater effort; or able to engage in usual employment, but experiences difficulty in carrying out full range of occupational activities due to entitled condition and may require modification to workplace, provision of aids or restructuring of tasks; • Able to drive a private motor vehicle or use public transportation independently, but may need vehicular adaptations, special seating or more frequent breaks; • Mild limitation with usual and accustomed type, frequency and quality of recreational and community activities e.g., reduced frequency of activity; may require some assistance to participate in activity; may require changes in routine or activity. Recreational and community activities are still satisfying; • Mild reduction in the *scope, frequency and quality of usual and accustomed social and inter-personal relationships, e.g., contact with family, casual friends, colleagues and neighbours may occur but contact with casual acquaintances and participation in large gatherings may be avoided or reduced; occurrence of conflict in relationships more frequent than before; the inability to carry out some usual and accustomed family or social responsibilities due to the entitled condition or bracketed entitled conditions.
Level 2	<p>Moderate interference with the ability to carry out the <i>usual and accustomed</i> activities of independent living, recreational and community activities, and/or personal relationships due to the entitled condition or bracketed entitled conditions:</p>

³² Veterans Affairs Canada, 2006. 2006 Table of Disabilities. Chapter 2 – Quality of Life Rating Chapter: Table 2.1. Source: <http://www.veterans.gc.ca/eng/services/after-injury/disability-benefits/benefits-determined/table-of-disabilities/ch-02-2006#t01>

<p>Level 2 (cont'd)</p>	<p>Majority of the following criteria must be met for a level 2 rating.</p> <ul style="list-style-type: none"> ● Able to perform domestic/household activities with assistance/special adaptations; or unable to work full time in normal occupation, or has had to change occupation or number of hours worked, or both because of the entitled condition; ● Unable to drive but can travel using public or private transportation with assistance and/or vehicular adaptations; ● Moderate limitation with usual and accustomed type, frequency and quality of recreational and community activities e.g., reduced frequency of activity; requires changes in routine or activity, able to participate in activity but requires assistance; ● Moderate reduction in the *scope, frequency and quality of usual and accustomed inter-personal, social and interpersonal relationships; relationships primarily confined to immediate family and close friends; unable to carry out most of the usual and accustomed family responsibilities and is uninterested or distressed by partaking in usual family or social activities or outings due to the entitled condition or bracketed entitled conditions.
<p>Level 3</p>	<p>Extreme interference with the ability to carry out <i>usual and accustomed</i> activities of independent living, recreational and community activities, and/or personal relationships due to the entitled condition or bracketed entitled conditions. Majority of the following criteria must be met for a level 3 rating.</p> <ul style="list-style-type: none"> ● Not able to complete most domestic/household activities even with assistance or special adaptations; or unable to work due to entitled condition; ● Not able to use private or public transportation and is dependent on transportation for the disabled; ● Extreme limitation in usual and accustomed type, frequency and quality of recreational and community activities e.g., unable to take part in usual and accustomed activities and unable to participate in alternate activities; ● Extreme reduction in the *scope, frequency and quality of usual and accustomed inter-personal, social and interpersonal relationships. Severely affected relationships with extreme difficulty in relating to anyone e.g. virtually little or no contact with family members, close friends: relationships with family or friends, etc. are almost non-existent and extremely strained; unable to carry out most usual and accustomed family responsibilities.

* Scope is defined as family, friends, colleagues and neighbours.

ANNEX D – TABLE 2.2 – QUALITY OF LIFE CONVERSION TABLE³³

Medical Impairment Rating (Calculated Using Impairment Chapters)	Level 1 – Quality of Life Rating	Level 2 – Quality of Life Rating	Level 3 – Quality of Life Rating
1-10	1	2	N/A
11-20	2	3	5
21-30	3	5	7
31-40	4	6	9
41-50	5	7	11
51-60	6	9	13
61-70	7	11	15
71-80	8	13	17
81-100	10	15	20

³³ Veterans Affairs Canada, 2006. 2006 Table of Disabilities. Chapter 2 – Quality of Life Rating Chapter: Table 2.2. Source: <http://www.veterans.gc.ca/eng/services/after-injury/disability-benefits/benefits-determined/table-of-disabilities/ch-02-2006#t02>

ANNEX E – FACT SHEET – HEARING LOSS DISABILITIES FOR VETERANS AFFAIRS CANADA (VAC) PURPOSES

- 7 -

Fact Sheet – Hearing Loss Disabilities for Veterans Affairs Canada (VAC) Purposes

If service-related noise exposure is considered to be a cause of your hearing loss disability, entitlement will be determined based on the amount of hearing loss you had at the time of your release from military service.

You have ...	If...
normal hearing	the range of hearing in both ears is between 0 and 25 decibels at all frequencies between 250 and 8000 Hertz (inclusive).
some loss of hearing (that is, non-disabling hearing loss)	the hearing loss in either ear is greater than 25 decibels at frequencies between 250 and 8000 Hertz (inclusive), but is not great enough to be considered a hearing loss disability.
a hearing loss disability	the hearing loss in either ear adds up to 100 decibels or more when calculated over 4 frequencies (specifically 500, 1000, 2000 and 3000 Hertz). OR the hearing loss in both ears is 50 decibels or more at a frequency of 4000 Hertz.

Entitlement (1/5 – 4/5) - Portion of hearing disability related to military service

Decibel (dB) loss at the time of release	Hearing Loss Category	Entitlement
26 - 40 dB	mild	1/5
45 - 60 dB	moderate	2/5
65 - 90 dB	severe	3/5
95 - 110 dB	profound	4/5

***Only frequencies between 2000 and 6000 Hertz inclusive are considered to be affected by noise.**

ANNEX F – DEPUTY MINISTER'S RESPONSE TO REASONS FOR DECISIONS AND DISCLOSURE RECOMMENDATIONS

OVO Reference: CROMB14-000083
VAC Reference: DM14-009173

Guy Parent
Veterans Ombudsman
Suite 1560
360 Albert Street
Ottawa, Ontario
K1R 7X7

Dear Chief Warrant Officer Parent (retired):

Thank you for your letter of December 10, 2014 advising the Department of your intention to conduct a follow-up review to determine what progress has been made in regards to the implementation of recommendations contained in the *Veterans' Right to Know Reasons for Decisions* Report and the *Veterans' Right to Disclosure* Report.

In response to your request for a main point of contact for the review, please feel free to contact Sandra Williamson, Director of Long Term Care and Disability Benefits, Service Delivery Branch. She can be reached by e-mail at Sandra.Williamson@vac-acc.gc.ca or alternatively by telephone at (902) 370-4582.

Further to the feedback we provided to your office on October 22, 2012 regarding the *Veterans' Right to Disclosure* Report, attached you will find additional details on actions the Department has taken to implement your recommendations. One of our key accomplishments has been the implementation of the "Right to Fairness Implementation Plan" as announced by Minister Blaney on February 4, 2013.

.../2

-2-

Since receiving your recommendations, the Department has put in place many measures to improve both the efficiency of its disability benefit application processes, as well as the clarity of its decision letters. We look forward to assisting you in the follow-up review. Sandra Williamson will be available to provide more detail on our work and co-ordinate your access to any work products necessary to demonstrate our achievements and next steps.

I look forward to receiving a draft copy of your follow-up report and thank you for your continued work on behalf of Canada's Veterans

Sincerely,

//original signed by//

W.J. Natynczyk
General (Ret'd)

c.c. Michel Doiron, ADM, Service Delivery Branch
Sue Foster, ADM, Policy Communications and Commemoration
Branch

Follow-up Review: Reasons for Decisions and Right to Disclosure

Report: Veterans' Right to Know Reasons for Decisions – A Matter of Procedural Fairness			
#	Recommendation	Actions Taken to Date *	Next Steps *
1	For Veterans Affairs Canada to improve the mechanisms by which disability benefit assessment letters are generated to make sure essential information is captured for inclusion in letters. This information should be presented in a form that is understandable and is in relation to the decision made. An explanation of how this information has been used to arrive at the decision is required. The Department should also ensure that a notice of the right to appeal is contained in every disability benefit decision letter.	<p>As of December 31, 2014, the Department has simplified the language in 120 disability letters. The format of correspondence was also modified to consist of a cover letter and a separate decision document that outlines the reasons for the decision.</p> <p>A new letter writing system (Adobe) is being used to create and revise key letters to Veterans and their families.</p> <p>The Department went beyond the OVO's recommendation to improve disability benefit decision letters and also improved letters for other programs, including Treatment Benefits, Financial Benefits, the Rehabilitation Program, Career Transition Services, Health Benefits (Public Service Health Care Plan), Veterans Independence Program, and the Long Term Care Program.</p> <p>In total, more than 300 plain language letter templates are now in use.</p>	Work will continue to review, revise and create other letter templates.
2	For reasons for decisions to be written in plain language. Any legal, medical, or administrative terms used should be explained. A separate brochure or other companion piece would serve this purpose and could be included with decision letters.	<p>The new letter templates include more information on:</p> <ul style="list-style-type: none"> • Evidence needed to seek a Departmental Review (included in unfavourable decisions) • Reasons for Quality of Life ratings • Reasons for entitlement • Reasons for medical impairment rating • Where to access online information • Accessing health benefits • Contact information for appeals <p>Limiting legal and medical terminology was a key consideration in developing the new templates and training staff.</p>	Ongoing guidance to staff and quality assurance are used to enhance use of "lay person's" medical language.

Follow-up Review: Reasons for Decisions and Right to Disclosure

#	Recommendation	Actions Taken to Date	Next Steps
3	For procedure manuals and training modules to be examined to ensure that adjudicators are aware of the minimum information to be provided in letters and what is needed to substantiate the reasons for their decisions.	The decision letter chapter in the Adjudicator's manual was updated to reflect the new decision letter template and staff training was provided in April 2012.	Ongoing guidance and direction is provided to staff as required.
4	For quality assurance procedures to be put in place to ensure decision letters fully comply with standards for adequacy of reasons for decisions.	Enhanced quality control measures are in place to monitor both French and English decisions in terms of reasons for decisions and grammar.	Ongoing reviews will implement additional measures, as required.

Report: Veterans' Rights to Disclosure – A Matter of Procedural Fairness

#	Recommendation	Actions Taken to Date	Next Steps
1	That Veterans Affairs Canada modify the current procedure to retrieve service and health records by providing applicants with a copy of the records and all other information that will be considered by adjudicators in making decisions on disability benefit applications, along with a notice advising applicants of the importance of reviewing the information and notifying the Department of any errors or omissions.	<p><i>Per the DM feedback to the OVO as reflected in her October 2012 correspondence, VAC disagreed with this recommendation.</i></p> <p>It was noted that VAC's current process is designed to ensure timely decisions are rendered while minimizing the administrative burden on Veterans. Although the Department agrees with the concept of this recommendation in ensuring procedural fairness and participation rights; it does raise some administrative consequences, not only for Veterans Affairs Canada, but for the Canadian Armed Forces.</p>	No specific action planned in response to this recommendation.

Follow-up Review: Reasons for Decisions and Right to Disclosure

#	Recommendation	Actions Taken to Date	Next Steps
2	That Veterans Affairs Canada clarify how service and health records required to process disability benefit applications will be obtained and by whom; and that this be included in a policy available to applicants.	Consistent with the commitment outlined in its action plan, the Department reviewed its disability benefit applications package and the information available online. A fact sheet that explains, in plain language, how applicants can obtain a copy of their official service health records, their rights and responsibilities to ensure their official records are correct; and who to contact to correct any errors in their records, was developed and posted on the VAC web-site. The revised disability benefit application package also includes relevant information.	No further action planned.
3	That Veterans Affairs Canada more clearly inform applicants of its intent to retrieve service and health records upon receipt of the application, and the types of records that will be retrieved, and notify applicants that, notwithstanding the actions deemed to be authorized by the consent form, applicants remain responsible for the accuracy of the information.		
4	That service and health records recovered by Veterans Affairs Canada in support of disability benefit applications be sent directly to disability adjudicators intact and without input by employees who do not have the delegated authority to render decisions on applications.	An operational directive was issued in February 2013 reminding Disability Adjudicators of their responsibilities with respect to reviewing service records and other evidence.	No further action planned.

*It should be noted that following the release of the report entitled *Veterans' Right to Disclosure: A Matter of Procedural Fairness*, the Minister of Veterans Affairs announced the *Right to Fairness Implementation Plan* to enhance the Department's disability benefit application process. The *Plan* set out key commitments and actions with respect to 1) the Veteran Outreach Initiative; 2) Veterans' Right to Know; 3) Cutting Red Tape; and 4) Empowering Disability Adjudicators. The *Plan* has been fully implemented.