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VA'S MISLEADING "ACCURACY" METRIC
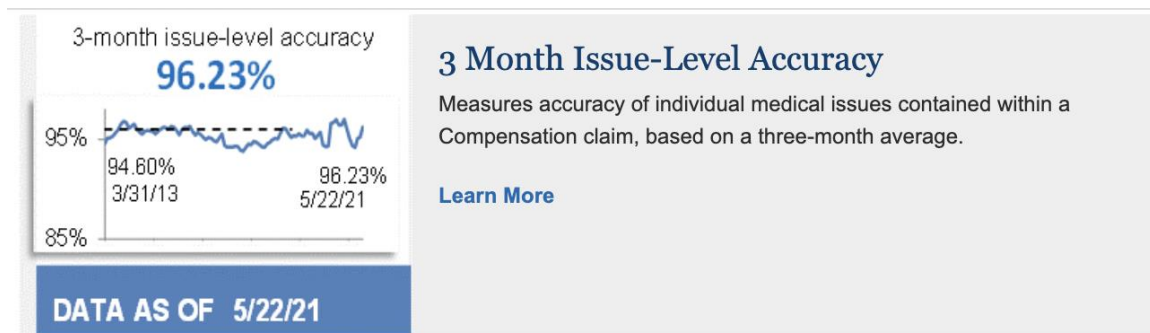
Political language often consists largely of euphemism, question-begging, and sheer cloudy vagueness.[1]

Summary: VA misleads veterans and taxpayers by promoting a metric that supposedly measures "disability determination accuracy," when it actually measures an ancillary activity, and says *nothing* about adjudication accuracy.

This is a quote from a VA witness at a 2017 Congressional hearing:

"… accuracy of processing on PTSD claims was 94.2 percent …."[2]

This is a screenshot from the VA website, showing one of four "accuracy" graphs:[3]

The "Learn More" page for this statistic indicates that it "measures disability determinations accuracy of individual medical issues contained within a Compensation claim …."[4]

Most people probably conclude from these metrics that VA adjudicates PTSD claims accurately 94% of the time, with a 96% accuracy rate for all claims.

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[1] Slight paraphrase of George Orwell, "Politics and the English Language," in *The Collected Essays, Journalism and Letters of George Orwell, vol. 4, In Front of Your Nose, 1945–1950*, edited by Sonia Orwell and Ian Angus, (London: Secker & Warburg, 1968), 136 ("Thus political language has to consist largely of euphemism, question-begging, and sheer cloudy vagueness.").

[2] *PTSD Claims: Assessing Whether VBA is Effectively Serving Veterans: Hearing before the Subcomm. on Disability Assistance & Memorial Aff. of the H. Comm. on Veterans Aff.*, 115th Cong. 21 (2017) (Statement of Ronald Burke, Assistant Deputy Under Secretary, Office of Field Operations, Veterans Benefits Administration), http://docs.house.gov/meetings/VR/VR09/20170725/106322/HHRG-115-VR09-Transcript-20170725.pdf

[3] https://www.benefits.va.gov/REPORTS/detailed_claims_data.asp

[4] https://www.benefits.va.gov/reports/mmwr_va_accuracy_measures.asp

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But given Mr. Orwell's warning about political language, we should stop and reflect on VA's assertion before accepting it at face value. For example, we might ask:

i.   What is involved in VA "disability determination"? and

ii. To what extent does VA actually measure "disability determination"?

What is involved in disability determination?

In the VA context, "disability determination" means determining if a veteran:

- is eligible for VA disability compensation;[5,6]
- suffers from a compensable injury or illness;[7] and
- incurred the injury or illness during military service.[8]
- If those three conditions are satisfied, VA must then evaluate the extent to which the injury or illness causes social and occupational impairment, which in turn determines the disability rating.[9]

Thus, "disability determination" consists of **several components**, each of which involves decisions that can vary in terms of accuracy.

Disability determination components: What should be measured?

Assuming a veteran is eligible and entitled to benefits, here are the primary disability determination components, with more information about what is involved and what should be measured.

1) **Determine if the veteran suffers from a compensable injury or illness.**

   a. *What is involved?* In the case of PTSD and other mental disorders, as well as traumatic brain injury (TBI), this step almost always requires a compensation and pension examination (C&P exam).[10,11] VBA staff rely on the C&P exam results to determine if the veteran suffers from a compensable injury or illness.[12,13]

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[5] *See, e.g.*, Definitions, 38 C.F.R. § 3.1(d); *see generally* Adjudication, 38 C.F.R. chap. 3.

[6] VETERANS BENEFITS ADMIN., DEP'T VETERANS AFFS., FISCAL YEAR 2020 ANNUAL BENEFITS REPORT 74 (June 2021), https://www.benefits.va.gov/REPORTS/abr/ ("Once basic eligibility requirements have been met, decisions on entitlement for C&P benefits are based on statutory and regulatory requirements and the evidence of record that documents these requirements have been met.").

[7] Disability compensation, 38 C.F.R. § 3.4(b).

[8] Principles relating to service connection, 38 C.F.R. § 3.303.

[9] General policy in rating, 38 C.F.R. subpt. A.

[10] *See* 38 U.S.C. § 5103A(d); *see also* 38 C.F.R. 3.159(c)(4); *and* Veterans Benefits Admin., Dep't Veterans Affs., *M21-1 Adjudication Procedures Manual*, pt. I, chap. 1, sec. C, no. 3, Assisting with obtaining a medical examination or opinion.

[11] *The VA Medical Examination and Disability Rating Process: Hearing before the Subcomm. Disability Assistance & Memorial Aff. of the H. Comm. Veterans Aff.*, 110th Cong. 63–65 (2008) (statement of Michael McGeary, Senior Program Officer & Study Dir., Comm. Med. Evaluation Veterans Disability Benefits, Bd. Mil. & Veterans Health, Inst. of Med., Nat'l Acad. Sci.) ("Applicants for disability compensation are asked to provide their medical records and, under the duty-to-assist law, VBA helps them obtain those records, especially their service medical records. In nearly every case, VBA has applicants undergo a compensation and pension, or C&P, examination performed by a Veterans Health Administration (VHA) or contractor clinician.")

[12] *See, e.g.,* Washington v. Nicholson, 21 Vet. App. 191, 197 (2007) (Hagel, J., concurring) ("Because of the immense importance of medical evidence in the VA claims process," [medical examinations and opinions] "can bear significantly upon the outcome of the claim for VA benefits.")

[13] *See also* Mathis v. McDonald, 834 F. 3d 1347, 1353, (Fed. Cir. 2016) (Reyna, J., dissenting from denial of rehearing en banc) ("VA regional offices use the opinions prepared by examiners in determining whether to award a veteran disability benefits. The

  b. *What should be measured?* VA should assess:

    i. the accuracy of VBA staff determinations, and

    ii. the accuracy of C&P exam conclusions regarding diagnoses, signs & symptoms, causation, etc.

2) **Did the veteran incur the injury or illness during military service?**

  a. *What is involved?* The C&P examiner proffers an expert witness opinion on this question.[14] VBA staff make the final decision regarding service connection.

  b. *What should be measured?* VA should assess the reliability,[15,16] especially the *interrater reliability*,[17,18] and validity[19,20,21] of

    i. the C&P examiner opinion, and

    ii. the VBA staff decision.[22]

3) **To what extent does the injury or illness cause functional impairment?**

  a. *What is involved?* VBA staff make the final determination, although C&P examiner opinions significantly influence VBA decisions in this regard.

  b. *What should be measured?* VA should assess:

    i. the reliability and validity of C&P examiner conclusions, and

    ii. the reliability and validity of the VBA disability rating.

The sad truth is that VA does *not* measure *any* of these crucial disability determination components.[23]

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decision whether to award benefits often turns on whether the disability is shown to be connected to the veteran's military service. … In other words, as in this case, the service connection issue is often dispositive.")

[14] Regarding "expert witness opinion", *see* Nieves-Rodriguez v. Peake, 22 Vet. App. 295, 304 (2008), ("both VA medical examiners and private physicians offering medical opinions in veterans benefits cases are nothing more or less than expert witnesses.").

[15] OXFORD UNIVERSITY PRESS (2021), https://www.lexico.com/definition/reliability ("reliability, *n.* ... 1.1 the degree to which the result of a measurement, calculation, or specification can be depended on to be accurate.")

[16] MOSBY'S MEDICAL DICTIONARY, 9th ed. (Marie T. O'Toole, ed. 2013), Kindle loc. 140642 (reliability is "the extent to which a test measurement or device produces the same results with different investigators, observers, or administration of the test over time. If repeated use of the same measurement tool on the same sample produces the same consistent results, the measurement is considered reliable.")

[17] Also known as *inter-judge* or *inter-observer* reliability, sometimes without hyphenation, e.g., *interjudge* or *interobserver*.

[18] FARLEX PARTNER MEDICAL DICTIONARY (2009), https://medical-dictionary.thefreedictionary.com/interrater+reliability ("interrater reliability is the extent to which two independent parties, each using the same tool or examining the same data, arrive at matching conclusions.").

[19] TRUMAN LEE KELLEY, INTERPRETATION OF EDUCATIONAL MEASUREMENTS 14 (1927) ("the problem of validity is that of whether a test really measures what it purports to measure...").

[20] OXFORD ENGLISH DICTIONARY, http://www.oed.com/view/Entry/221190 (2nd ed. 1989, rev. June 2021) ("validity *n.* ... 2a. of arguments, proofs, assertions, etc.: well-founded and fully applicable to the particular matter or circumstances; sound and to the point; against which no objection can fairly be brought.").

[21] *Cf.* NAT'L ACAD. SCI., ENG'G, & MED., EVALUATION OF THE DISABILITY DETERMINATION PROCESS FOR TRAUMATIC BRAIN INJURY IN VETERANS 83–96 (2019), https://doi.org/10.17226/25317 (describing how to define and measure quality, as applied to the disability claim adjudication process).

[22] There are actually additional determinations that examiners and VBA staff might need to make, e.g., whether or not military service aggravated a preexisting disorder, or if a currently service-connected injury or illness leads to the development of a new illness or aggravates an existing condition.

[23] *See* app., table 1.

VA's deceitful "accuracy" metric.

What VA calls "disability determination accuracy" is actually a "consistency of process" measure, i.e., the consistency with which VBA staff apply rules, standards, and guidelines to the rating process. While following the rules is important, a rule-following metric does *not* measure the reliability or validity of any of the crucial disability determination components.

The *National Academy of Medicine* took VA to task for trumpeting this misleading statistic:

> … in discussions with VBA officials, there was great emphasis on the consistency of the rating process itself, rather than on the outcome of the disability determinations. Consistency of process was presented as an end in and of itself … [but] the emphasis on consistency of process does not actually ensure the reliability or the validly of the rating.[24] [*emphasis added*]

Request to the Advisory Committee on Disability Compensation.

Press VA to:

(1) Rigorously **measure** the *reliability* and *validity* of each disability determination component.

(2) Stop promoting **deceptive** "accuracy" metrics.

(3) Follow the **recommendations** in chapter 4 of the 2019 *National Academy of Medicine* TBI report,[25] which apply to all compensable injuries and illnesses.

(4) Include "rigorously measure the reliability and validity of each disability determination component" (or similar) in the Department's *Evidence-building Plan*[26] pursuant to the Foundations for Evidence-Based Policymaking Act of 2018.[27]

(5) Draw on **expertise** within VA, such as (just two of many examples):

    a. QUERI – *Quality Enhancement Research Initiative*, "Using evidence to inform national policy initiatives", https://www.queri.research.va.gov/peprec.cfm

    b. *Partnered Evidence-Based Policy Resource Center*, https://www.peprec.research.va.gov/PEPRECRESEARCH/index.asp

        i. Push back against the "but that's not our silo" mentality.

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[24] *Supra*, note 21, at 83; *also* note that while this *National Academy of Medicine* report concentrates on traumatic brain injury (TBI), the *Academy*'s recommendations for a veteran-centric, methodologically rigorous quality assurance program apply just as much to other disabilities.

[25] *Supra*, note 21.

[26] Agency evidence-building plan, 5 U.S.C. § 312.

[27] Foundations for Evidence-Based Policymaking Act of 2018, Pub. L. 115-435, 132 Stat. 5529 (2019).

APPENDIX

❖ **Table 1.**

Disability Determination Component	Does VA measure this component?[28]
Compensable injury or illness: *VBA staff determination.*	No.
Compensable injury or illness: *C&P exam conclusions.*	No.
Nexus between military service and current injury or illness: *C&P examiner opinion.*	No.
Nexus between military service and current injury or illness: *VBA staff determination.*	No.
Functional impairment: *C&P examiner symptom checklist endorsements and opinion.*	No.
Functional impairment: *VBA staff determination.*	No.

Table 1. List of major disability determination components, and whether or not VA measures the reliability and validity of that component.

❖ **Excerpts from the National Academy of Medicine TBI report, chap. 4:** *Characteristics of a High-Quality Process for Determining Disability …*

The determination of disability can be conceptualized as an assessment or measurement process whose components include ***all the steps* in the diagnosis, evaluation, and disability rating** … resulting in an overall disability assessment for the veteran.

The overall quality of the disability determination process is *multifactorial* and includes aspects of **process** (e.g., the transparency of the process, the burden to the veteran) and **outcome** (e.g., the reliability and validity of disability determinations).

Validity, in this context, is the degree to which the disability determination process results in the **correct quantitative result for each veteran** evaluated, over a wide range of injury severity, veteran characteristics, and geographic locations (Price, 2016).[29]

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[28] Specifically, does VA measure the *reliability* and *validity* of the component.

[29] LARRY R. PRICE, PSYCHOMETRIC METHODS: THEORY INTO PRACTICE (2016).

… The STAR review uses a checklist to measure how consistently claims comply with VBA's policies and procedures. Thus, the committee concluded that the VA defines quality primarily based on adherence to its policies and procedures.

… **There is no single metric** that captures the overall quality or performance of the disability determination process; instead, there are **multiple domains** that must be considered.[30]

The Academy identified four critical domains:
1) *burden* to the veteran
2) *transparency* and credibility of the process
3) *reliability* of the determinations
4) *validity* of the determinations

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[30] *Supra*, note 21, at 83–84.