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Smith, deputy general counsel for Disabled American Veterans.

Smith said the eye problems would have earned him a 30 percent disability rating, the level at which troops draw lifetime, tax-free medical retired pay and all other routine retirement benefits for themselves and their families.

But Pinero was rated as 10 percent disabled for an esophagus problem.

Smith said he knows of another soldier who lost the use of his arm, but was rated for a different, lesser disability. The loss of a limb is supposed to merit a disability rating of 70 percent, "no ifs, ands or buts," Smith said. "But these people just wouldn't do it. They fail to follow their own regulations."

"We had heard some of that in after-action reviews with the soldiers and families," Cody acknowledged. But again, he blamed the problems on the bureaucracy — an explanation offered over and over at all levels during a blizzard of congressional hearings the week of March 5.

Cynthia Bascetta, director of VA and military health care issues for the Government Accountability Office, said all these problems have been raised to the Defense Department before — multiple times.

In this arena, Bascetta said, "The systemic fixes don't seem to happen. There's no quality-assurance mechanism in place."

**Fit for duty?**

Col. Jerry Lechlitter sued the Army when a physical evaluation board found him fit for duty — even though he had 11 ailments, including injuries to his back, shoulder and elbow, as well as three surgeries on his feet.

In July, he won the right to an appeal through the physical evaluation board in U.S. Federal Claims Court, but instead settled for a 70 percent disability rating and \$30,000 in back pay.

"When a physical evaluation board underrates ailments and denies disability retirement, the soldier and his family suffer for life," he said.

In his case, the Army cited a Defense Department regulation that states only those found unfit have the right to appeal a disability ratings decision. But the Army's own regulations states that any soldier may appeal an informal physical evaluation board. Lechlitter said soldiers are not told about that.

Parker said other issues include rating soldiers for limitation of motion based only on what physical evidence shows — for example, in an X-ray.

"Pain doesn't show up on an X-ray, but the other services rate for it," Parker said. "But the Army creates its own policy for pain, and it caps out at a 20 percent [disability rating]. They're using a regulation that doesn't follow the law."

Parker said he feared that by focusing attention on convoluted rules and procedures, the Army will evade further inquiries into whether physical evaluation board members intentionally give soldiers low ratings.

Parker said a disability retirement budget that has remained steady at \$100 million a month from 2002 to 2005 — despite thousands more people going through the system in the Army alone, according to data from the Pentagon's Office of the Actuary — suggests to him that defense officials have an idea of how much they want to spend on disability retirement.

In addition to the process itself, another controversial issue is the training and qualifications of the counselors helping sol-

diers through the medical and physical evaluation boards, who are often untrained, under-qualified and low-ranking, critics say.

Parker said these complexities may be partly why a comparatively larger proportion of officers get higher percentage disability ratings: They may be more likely to under-

stand the regulations, to speak up for themselves if they feel they are being treated unfairly, and to ask detailed questions of the people handling their cases.

For his part, Schoemaker vowed to tackle the problems.

"We're deep into fixing it," he told lawmakers. "I'm turning my energy from anger into some results." □

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