

Ensuring Access to Disability Benefits for Veteran Survivors of Military Sexual Trauma

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Statement of

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For the Record

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Committee on Veterans' Affairs
Subcommittee on Disability Assistance and Memorial Affairs

With Respect To

“Ensuring Access to Disability Benefits for Veteran Survivors of Military Sexual Trauma”

WASHINGTON, D.C.

Chairwoman Luria, Ranking Member Bost, and members of the subcommittee, on behalf of the men and women of the Veterans of Foreign Wars of the United States (VFW) and its Auxiliary, thank you for the opportunity to provide recommendations on disability benefits for veteran survivors of military sexual trauma (MST).

Nearly 25 percent of women veterans who use Department of Veterans Affairs (VA) health care services report experiencing at least one sexual assault while in the military, compared to approximately 1 percent of male veterans. *The Department of Defense Annual Report on Sexual Assault in the Military* for the fiscal year (FY) 2018, which was released April 9, 2019, shows that about 6.2 percent of active duty women have experienced a sexual assault in the year before being surveyed. This is a statistically significant rise from the 4.3 percent

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who had reported previously. The rate for men stayed basically the same at .7 percent. The Department of Defense (DOD) reported that these percentages translate into roughly 13,000 women and 7,500 men, for a total of 20,500 service members, who have experienced some kind of sexual assault in 2018 — an increase from 14,900 service members in the previous report.

When DOD conducted its annual survey of the force, it found that the majority of sexual assaults happened to people who are 17-24 years old and people who work, train, or live near each other. The female respondents stated that their attackers are often a male they are either friends or acquaintances of, either the same rank or one higher. Women in grades E3 and E4 were the group with the most alleged incidents, which can result in post-traumatic stress disorder (PTSD) and can lead to a host of other issues.

The rate of sexual assault in the military directly affects the lives of service members once they transition out of the military. According to Dr. Maureen Sayres Van Niel, president of the American Psychiatric Association Women's Caucus, "There is a clear correlation between the experience of sexual harassment or sexual assault for a women and adverse effects on her life, be they physical or mental health consequences." These health problems can include anxiety, depression, high blood pressure, and poor sleep. According to the RAND Corporation's 2018 report entitled "Needs of Male Sexual Assault Victims in the U.S. Armed Forces," male sexual assault victims experience depression, anxiety, nightmares, or problems with anger control. Both men and women have a higher rate of PTSD and other anxiety and depressive disorders than their peers who did not experience a sexual assault.

This is where VA can provide support for these veterans. How their claims are handled affects their ability to transition to civilian life as contributing members of society. When VA fails to do its job, veterans suffer needlessly. The Office of the Inspector General (OIG) released a report in August 2018 detailing how VA erroneously adjudicated 49 percent of the PTSD claims for MST claimants.

MST claims are not easy to process. The DOD report states that only about one-third of MST survivors report their assaults. This means that for many veterans there is no mention of seeking treatment, or reports of the assault in their military files. Without a report of an event in service, it is hard to prove VA claims of PTSD and other mental health diagnoses. In 2011, the Veterans Benefits Administration (VBA) implemented procedures to ensure veterans are provided every opportunity to prove their claim by easing the evidence needed for MST-related PTSD claims. These procedures are intended to ensure veterans who deserve benefits are not wrongly denied. Unfortunately, these controls were either overlooked or ignored in many of the sample cases OIG reviewed.

In 2012, VBA started its Segmented Lanes organizational model to address the claims backlog. In this model, there was a lane called Special Operations Lane. It was in this lane

that MST-related claims were delegated to ensure they received the proper attention by specialized VBA staff. At that time, MST coordinators, Veterans Service Representatives (VSR), and Rating Veterans Service Representatives (RVSR) were given specialized training on how to rate MST-related claims. In FY 2016, VBA changed from the Segmented Lanes to the National Work Queue (NWQ). The NWQ changed how claims workload is distributed. Claims are now distributed daily throughout the regional offices based on the ability of the regional offices to deal with capacity, priorities, and special missions. With the switch to the NWQ, VA eliminated the specialized training and Special Operations Lanes. Doing so has caused dire consequences for veterans. The OIG report concurs with the VFW that VBA needs to process MST-related claims with a specialized group of VSRs and RVSRs.

A review of claims before they are finalized is another avenue that VBA can take to ensure that MST-related claims are being adjudicated correctly. VBA compensation services has Quality Review Teams (QRT) and Systematic Technical Accuracy Review (STAR) teams who exist to maintain quality control. Starting in 2011, STAR teams began reviewing MST-related claims. From 2011 through 2015 the error rate for these claims dropped and, as a result, the STAR teams stopped their reviews of MST-related claims in December 2015. The VFW has seen a correlation between the elimination of such quality reviews and an increase in error rates. This is why the VFW strongly believes that adding a layer of review before claims are finalized is absolutely necessary to ensure that MST victims are not victimized again by sloppy VA work products. The OIG concurs as they made the same recommendation.

Training of VSRs and RVSRs is imperative to proper implementation of VBA policy and new laws. VBA had four training modules on the topic of MST claims. However, the OIG found that the training had not been updated since 2014, even though VA had made changes to the Adjudication Procedures Manual. How are VSRs and RVSRs supposed to accurately adjudicate a claim when the information they have is outdated? The VFW believes they cannot effectively do their jobs when they are not given the proper tools. The VFW has stated before and will continue to press the fact that exact and consistent training will result in better claims outcomes for veterans and VA. It is important to note that errors in claims processing cost VA time and money—resources that VA does not have to waste.

MST coordinators play a vital role in the ability of veterans to provide all the evidence they may have in support of their claims. MST coordinators are supposed to contact the veteran via telephone when they file an MST-related claim. They do this to find out if the veteran ever reported the assault while they were still in the service, if they did report it, to find out where, and then determine how to collect that evidence. The OIG report found that 11 percent of the erroneously decided claims were because the MST coordinator did not contact the veteran or the VSR did not send a letter asking for the same information.

Such inaction by MST coordinators and VSRs is unacceptable. The VFW does not believe

that these coordinators just decided not to do their job. The VFW is concerned that MST coordinator positions are either vacant or are a collateral duty for VA employees. We found that the listed MST coordinator for Washington, D.C., is also the person the VFW's Washington staff is supposed to contact for our Personal Identity Verification cards. Since there is trauma with these types of claims, it is imperative that VA ensure MST coordinators are able to fully focus on that role.

The OIG report found that 49 percent of MST claims had been erroneously adjudicated. The question at hand is how will VA remedy the injustice of depriving claimants of benefits and causing them to suffer because of erroneous decisions? The VFW would like to see VA expeditiously review the claims that were erroneously decided and offer veterans the ability to have their claims adjudicated correctly. This process is called equitable relief, which is a legal remedy that authorizes the Secretary to correct an injustice. VA has not announced whether it will apply equitable relief to impacted veterans. It has done so in the past when more than 24,000 veterans were evaluated for traumatic brain injury by unqualified medical examiners, and it should do so for these veterans.

The VFW has been told that VBA will review these claims. The VFW has reached out to VBA to find out if this process has started, but has yet to receive an answer. Has VA even notified the incorrectly adjudicated claimants that their claims were erroneous? These veterans were traumatized at the time of their assaults and many were traumatized when filing their claims by having to relay the assault information. The VFW is concerned that inaccurate claims decisions related to MST may lead to additional psychological harm to MST victims.

The VFW is confident that VA has the ability to correctly adjudicate these claims. This is evident in the fact that claims errors were reduced when the STAR team was involved. It is encouraging to see that VA is working to modernize and update its disability claims process.

The VFW is aware of the challenges VA faces in taking care of our nation's veterans. This year VFW is celebrating 100 years of directly assisting veterans in obtaining their earned benefits, and looks forward to another century of working with VA to ensure that we take care of those who have worn our nation's uniform.