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FULFILLING OUR PROMISES
TO THE MEN AND WOMEN WHO SERVED

STATEMENT OF
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OF THE DISABLED AMERICAN VETERANS
BEFORE THE
COMMITTEE ON VETERANS' AFFAIRS
SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
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Chairwoman Luria, Ranking Member Bost, and Members of the Subcommittee:

Thank you for inviting DAV (Disabled American Veterans) to testify at today's hearing on "Ensuring Access to Disability Benefits for Veterans Survivors of Military Sexual Trauma (MST)."

DAV is a congressionally chartered national veterans' service organization of more than one million wartime veterans, all of whom were injured or made ill while serving on behalf of this nation.

To fulfill our service mission to America's injured and ill veterans and the families who care for them, DAV directly employs a corps of more than 260 National Service Officers (NSOs), all of whom are themselves wartime service-connected disabled veterans, at every VA regional office (VARO) as well as other VA facilities throughout the nation. Together with our chapter, department, transition and county veteran service officers, DAV has over 4,000 accredited representatives on the front lines providing free claims and appeals services to our nation's veterans, their families and survivors. We represent over one million veterans and survivors, making DAV the largest veterans service organization (VSO) providing claims assistance.

As a DAV Service Officer for nearly twenty one years, I have personal experience in representing thousands of veterans in claims and appeals, including MST-related claims, before four different VA Regional Offices and the Board of Veterans' Appeals. Based on this collective experience, our testimony will discuss DOD's recent annual report on military sexual trauma, VA's claims process for MST-related claims and its persistent inability to properly train, develop, and adjudicate claims for PTSD based on MST, and the impact that H.R.1092, the *Servicemembers and Veterans Empowerment and Support Act of 2019*, would have on MST-related claims.

DOD'S 2018 ANNUAL MILITARY SEXUAL TRAUMA REPORT

Madame Chair, military sexual trauma has become an all-too-common experience for women and men who serve in our armed forces. According to DOD's 2018 annual report, sexual assault was experienced by 6.2 percent of women and 0.7 percent of men in military service during the preceding 12 months. However, the number of men and women experiencing MST are nearly equal. Significant growth in this rate among women has occurred in every service branch, with the highest prevalence rate in the Marine Corps (10.7 percent) and the lowest rate in the Air Force (4.3 percent). Men are also affected by the experience, but growth in the prevalence rates is more contained.

Sexual harassment occurs even more frequently than assault. Almost a quarter of service women (24.2 percent) and 6.3 percent of men indicated that they had experienced it. Sadly, 20 percent of service women and about eight percent of men who experience harassment also experienced assault. This indicates that units with significant numbers of service members reporting sexual harassment may be workplaces with climates that seem to sanction sexual assault to perpetrators.

Despite the feelings of pain, fear, shame, embarrassment and betrayal that many survivors feel after being sexually attacked, rates of reporting the assault are growing from 1 out of 14 in 2006 to 1 out of 3 of those service members who experienced assault reporting it to a DOD authority in 2018.

DOD has also learned that survivors' fears of retaliation for reporting are real. Twenty-one percent of service members who reported an incident of assault reported experiencing actions that meet the legal definition of retaliatory behavior. Unfortunately, this justified fear of reporting incidents of sexual assault and harassment has compounding effects for survivors who often forego the care and treatment they require.

DAV's 2018 report, *Women Veterans: The Journey Ahead,* which examines the challenges women veterans face, detailed the story of member and Navy veteran, Leeia Isabelle, who, like so many MST survivors, did not report the crime against her claiming she wanted to "bury it and make it go away."

"I was just going through the motions and I wasn't really fully engaged in my life," she reported. Seeing the effects of MST on her relationships motivated her to begin the long road to recovery for which she credits VA group therapy with other women veterans, cognitive behavioral therapy, and local involvement with DAV.

Ms. Isabelle's story is typical of many veterans with post-traumatic stress disorder. Symptoms include numbness, hypervigilance, irritability, and lack of interest in the people or activities that once brought them joy. These changes can strain relationships, threaten employment, and isolate them from their families and communities.

When these incidents are not reported to military authorities, it complicates VA's current process for establishing service connection for PTSD related to personal assault. Although current regulations do not require verification of the incident, it does require corroboration, thus unreported incidents in the military can frustrate MST survivors in the existing claims process.

VA CLAIMS PROCESSING FOR PTSD BASED ON MST AND 38 C.F.R. 3.304(F)(5)

Currently, claims based on PTSD are not codified, but rather controlled by VA regulations, 38 C.F.R. 3.304(f). These regulations require a diagnosis of PTSD, and in most instances, a verified stressful event in service, and a medical opinion linking the diagnosis to the stressful event in service.

Specifically for MST-related or assault based PTSD claims, in 2002, 38 C.F.R. 3.304(f)(5) was added to explain the requirements for PTSD based on personal assault and notes that verification of the stressful event is not required, only corroboration.

It provides, "if a posttraumatic stress disorder claim is based on in-service personal assault, evidence from sources other than the veteran's service records may corroborate the veteran's account of the stressor incident. Examples of such evidence include, but are not limited to: records from law enforcement authorities, rape crisis centers, mental health counseling centers, hospitals, or physicians; pregnancy tests or tests for sexually transmitted diseases; and statements from family members, roommates, fellow service members, or clergy. Evidence of behavior changes following the claimed assault is one type of relevant evidence that may be found in these sources. Examples of behavior changes that may constitute credible evidence of the stressor include, but are not limited to: a request for a transfer to another military duty assignment; deterioration in work performance; substance abuse; episodes of depression, panic attacks, or anxiety without an identifiable cause; or unexplained economic or social behavior changes. VA will not deny a posttraumatic stress disorder claim that is based on in-service personal assault without first advising the claimant that evidence from sources other than the veteran's service records or evidence of behavior changes may constitute credible supporting evidence of the stressor and allowing him or her the opportunity to furnish this type of evidence or advise VA of potential sources of such evidence. VA may submit any evidence that it receives to an appropriate medical or mental health professional for an opinion as to whether it indicates that a personal assault occurred."

This means that PTSD claims based on MST do not require survivors to have absolute verification of the incident, only corroboration. This is a lower threshold that differs from other PTSD related claims. However, the Veterans Benefits Administration (VBA) has persistent and systemic problems implementing this regulation. VBA has shown its inability to properly train, develop, and adjudicate claims for PTSD based on MST, as evidenced by the numerous reports of the VA Office of the Inspector General (OIG) and the United States Government Accountability Office (GAO).

December 2010 OIG Report

The December 16, 2010, OIG report, *Review of Combat Stress in Women Veterans Receiving VA Health Care and Disability Benefits*, found differences in VBA's denial rates among male and female veterans' claims for PTSD or for other mental health conditions. Specifically, VBA denied female veterans at a higher rate than male veterans for PTSD. The report estimated that VBA denied 49.8 percent of female veterans compared to 37.7 percent of male veterans who applied for PTSD disability compensation.

The 2010 report further revealed that none of the regional offices visited had specialized workgroups dedicated to processing MST-related claims. The report concluded that VBA had not assessed the feasibility of implementing MST-specific training and testing for claims processors who work on MST-related claims because it has not analyzed available data on its MST-related workload and how consistently these claims were adjudicated.

May 2011 OIG Report

In the OIG report of May 18, 2011, *Systemic Issues Reported During Inspections at VA Regional Offices*, it was noted that 50 percent of the VAROs reviewed did not follow VBA policy when processing PTSD claims. OIG projected VARO staff did not correctly process about 1,350 (8 percent) of approximately 16,000 PTSD claims completed from April 2009 through July 2010. This generally occurred because VARO staff lacked sufficient experience and training to process these claims accurately. Additionally, some VAROs were not conducting monthly quality assurance reviews. For these reasons, veterans did not always receive accurate benefits.

VBA Subsequent Actions

Starting in 2011, VBA began directing VAROs to designate MST specialists from among their adjudicators with experience processing complex claims. This was designed to improve adjudicator adherence to processing requirements for MST-related claims. The purpose of specialization was to allow regional offices to identify staff with the appropriate skills and sensitivity and afford specialists the opportunity to hone their knowledge of the MST requirements over many claims.

Subsequently, VBA developed additional guidance and training for MST specialists. Specifically, in late 2011, the agency issued a guidance letter and rolled out 1.5-hour and 4-hour training sessions on how to process PTSD claims related to MST. VBA also rolled out a one-hour training session on sensitivity in June 2011. All MST specialists were required to take each course once. With regard to medical examiners who conduct exams for MST-related claims, during this period, VHA instituted comparatively limited training.

Recognizing the systemic problems processing MST claims, in April 2013, VBA sent 2,667 notification letters to veterans whose PTSD claims related to MST were denied between September 2010 and April 2013. VBA advised the veterans to resubmit previously denied PTSD claims related to MST. The initiative was designed to correct any development errors that had occurred before VBA undertook its specialization and training initiatives.

June 2014 GAO Report

In June 2014, GAO released its report, *Military Sexual Trauma: Improvements Made, but VA Can Do More to Track and Improve the Consistency of Disability Claim Decisions*. The report concluded that in contrast to VA's actions to date, which largely have been taken in response to external requests, a more proactive and systematic approach could further dispel confusion among adjudicators and examiners, identify errors, and inform veterans of opportunities to resubmit denied claims. The GAO report recommended the Under Secretary for Benefits (USB) undertake a number of actions:

- Expand existing training and guidance to adjudicators responsible for MST-related claims by, for example, providing mandatory refresher courses or regularly distributing examples of relevant errors identified from quality assurance reviews.

- Develop a plan for conducting more comprehensive quality reviews of MST-related claims that allows the agency to identify problem areas, target improvement efforts, and track performance over time.

- Further analyze existing data on MST-related claim decisions by, for example, determining approval rates by regional office and veteran gender.

- Explore ways to systematically collect additional data on MST-related claims that might allow the agency to better track consistency. Such data could include reasons for denials, whether claim evaluations included a medical exam, and how often related medical exam reports are returned to VHA for clarification or deemed insufficient.

- Expand outreach to veterans who are eligible to resubmit their previously denied PTSD claims related to MST. The agency should conduct this outreach in partnership with the Veterans Health Administration or external organizations, such as veteran service organizations

August 2018 OIG Report

On August 21, 2018, VA OIG published its findings on *Denied Post-traumatic Stress Disorder Claims Related to Military Sexual Trauma*. The OIG report team found that VBA staff did not always follow VBA's policy and procedures, which may have led to the denial of veterans' MST-related claims.

The review team found that VBA staff did not properly process veterans' denied MST-related claims in 82 of 169 cases. As a result, the OIG estimated that VBA staff incorrectly processed approximately 1,300 or 49 percent of the 2,700 MST-related claims denied during that time. Due to the severity and volume of these errors, VA OIG recommended that VBA review all denied MST-related claims since the beginning of FY 2017 and reopen the cases with errors to ensure veterans receive accurate claims decisions as well as better customer service.

In reviewing the MST-related claims denied by VBA, the review team found that staff did not follow the required claims processing procedures. The most commonly encountered errors in processing were:

- Evidence was enough to request a medical examination and opinion, but staff did not request one;
- Evidence-gathering issues existed, such as Veterans Service Representatives (VSRs) not requesting veterans' private treatment records;
- MST Coordinators did not make the required telephone call to the veteran, or VSRs did not use required language in the letter sent to the veteran to determine whether the veteran reported the claimed traumatic event in service and to obtain a copy of the report; and
- Rating Veterans Service Representatives (RVSRs) decided veterans' claims based on contradictory or otherwise insufficient medical opinions.

The reasons MST-related claims were incorrectly processed were due to lack of previous specialization, lack of additional level of review, discontinued special focused reviews and inadequate training.

VBA previously implemented the Segmented Lanes model, which required VSRs and RVSRs on Special Operations teams to process all claims VBA deemed highly complex, as well as sensitive issues such as MST-related claims. The OIG review team concluded that staff on the Special Operations teams developed subject matter expertise on these highly sensitive claims due to focused training and repetition. Under the National Work Queue (NWQ), VBA no longer utilized the Special Operations teams. Under this new model, the NWQ distributed claims daily to each VARO and the VARO determined the distribution of MST-related claims.

As a result, MST-related claims were processed by any VSR or RVSR, regardless of their experience and expertise. The OIG review team determined VSRs and RVSRs that did not specialize, lacked familiarity and became less proficient at processing MST-related claims.

VARO staff suggested VBA reestablish specialized processing, allowing employees to develop the necessary expertise to ensure consistency and accuracy in processing these sensitive claims. The Deputy Under Secretary for Field Operations

agreed that dedicated staff working MST-related claims would help improve the quality of claims processing.

VBA currently requires an additional level of review for some types of complex claims, such as traumatic brain injury cases, but does not require this additional level of review for MST-related claims. RVSRs, quality review personnel, and supervisors interviewed at the four VAROs visited generally thought an additional level of review would be helpful and could improve accuracy. The Deputy Under Secretary for Field Operations and Compensation Service Quality Assurance personnel agreed that an additional level of review would help improve the accuracy of processing MST-related claims.

The national Systematic Technical Accuracy Review (STAR) team for Compensation Service and the Quality Review Teams (QRT) at each VARO execute VBA's quality assurance programs. MST-related claims are included in the STAR and QRT claim reviews. However, MST-related claims are only a small percentage of the overall claim volume and are less likely than other claim types to be randomly selected for STAR and QRT reviews. Therefore, STAR and QRT staff did not frequently review them.

STAR staff completed special focused quality improvement reviews of MST-related claims beginning in 2011, based on the deficiencies identified in a 2010 OIG report related to combat stress in women veterans. These reviews continued based on a 2014 Government Accountability Office (GAO) report on MST-related claims that found the problems persisted. Staff performed the reviews twice a year and identified errors like those this OIG review team found, such as missed evidence or markers and failure to request necessary medical examinations.

The STAR office stopped completing special focused quality improvement reviews of MST-related claims in December 2015. VBA's Quality Assurance Officer indicated the STAR office stopped performing special focused quality improvement reviews because it had met the GAO requirement. The Assistant Director of Quality Assurance for Compensation Service also stated that they reallocated resources towards other areas because the error rate declined for MST-related claims from 2011 to 2015.

Given the high error rate identified during its review, the OIG review team determined the STAR office should reinstate special focused quality improvement reviews of MST-related claims.

Compensation Service delivered MST training through four modules using VBA's online training management system. The MST-related claims training was one-time only and there was no requirement for annual refresher training.

The OIG report concluded their report with six recommendations:

1. The Under Secretary for Benefits reviews all denied MST-related claims since the beginning of FY 2017, determines whether all required procedures were followed, takes corrective action based on the results of the review, renders a new decision as appropriate, and reports the results back to the Office of Inspector General.

2. The Under Secretary for Benefits focuses processing of MST-related claims to a specialized group of VSRs and RVSRs.

3. The Under Secretary for Benefits requires an additional level of review for all denied MST-related claims and holds the second-level reviewers accountable for accuracy.

4. The Under Secretary for Benefits conducts special focused quality improvement reviews of denied MST-related claims and takes corrective action as needed.

5. The Under Secretary for Benefits updates the current training for processing MST-related claims, monitors the effectiveness of the training, and takes additional actions as necessary.

6. The Under Secretary for Benefits updates the development checklist for MST-related claims to include specific steps claims processors must take in evaluating such claims in accordance with applicable regulations, and requires claims processors to certify that they completed all required development action for each MST-related claim.

VBA responded to the OIG recommendations and indicated the target dates for implementation. At the time of this testimony, VBA has complied with recommendations number two and six. VBA responded in reference to recommendation number three and advised that a second level review was only completed by local quality review and requested the issue to be closed. However, the OIG has indicated their recommendation was not for a peer review but a second tier review to include Quality Review. The other recommendations are still considered pending as they were assigned target dates in the near future.

As noted by the several OIG reports and the GAO report, VA has persistently and improperly developed and adjudicated PTSD claims related to MST. The reasons MST-related claims were incorrectly processed were due to lack of previous specialization, lack of additional level of review, discontinued special focused reviews and inadequate training. These problems have continued since first identified in 2010. After nine years of incorrect processing, it becomes paramount to establish unrelenting congressional oversight and implementation of all of the OIG recommendations to alleviate VA's systemic problem with PTSD claims related to MST.

SERVICEMEMBERS & VETERANS EMPOWERMENT & SUPPORT ACT OF 2019

As we have indicated above, it is necessary for Congress to take legislative action and codify H.R. 1092, the Servicemembers and Veterans Empowerment and Support Act of 2019. It would essentially codify several parts of 38 C.F.R. 3.304(f)(5) but also would add other mental health conditions, in addition to PTSD, as being related to MST. This is a significant change over the current regulatory provision that only considers PTSD as a related mental health condition.

The legislation would require the Secretary to accept as sufficient proof of service connection a diagnosis of such mental health condition by a mental health professional together with satisfactory lay or other evidence of such trauma and an opinion by the mental health professional that such covered mental health condition is related to such military sexual trauma, if consistent with the facts of such service, notwithstanding the fact that there is no official record of such incurrence or aggravation in such service. It also requires the Secretary to resolve every reasonable doubt in favor of the veteran.

The bill would also add technological abuse, defined as behavior intended to harm, threaten, intimidate, control, stalk, harass, impersonate, or monitor another person, that occurs via the Internet, through social networking sites, computers, mobile devices to the types of trauma and resulting conditions for which survivors may seek both benefits and health care.

H.R. 1092 would require VA to re-establish specially trained teams to adjudicate MST-related claims for mental health conditions. We appreciate the role of the NWQ; however, as was found by the OIG, the removal of the specially trained teams for MST claims was part of the improper claims processing.

Finally, the bill would require VBA to report MST claims annually to Congress to ensure that these claims are adjudicated equitably. We believe this congressional oversight is required given the nine-year history of processing failures.

This bill is consistent with DAV Resolution No. 042, which calls for VA to conduct rigorous oversight of adjudication personnel who are responsible for evaluating disability claims associated with military sexual trauma and review of data to ensure existing policies are being faithfully followed and standardized in all VA regional offices.

In conclusion, DOD's recent annual report on military sexual trauma clearly notes the continuing problem with sexual trauma in the military including the substantial under reporting by the survivors of the trauma. As demonstrated, since the inclusion of personal assault provisions in 2002, VA has struggled to properly train, develop, and adjudicate claims for PTSD based on MST. It is time for decisive congressional action to alleviate VA's systemic problem with PTSD claims related to MST and pass H.R.1092, the Servicemembers and Veterans Empowerment and Support Act of 2019.

Madame Chair, this concludes my testimony on behalf of DAV. I would be happy to answer any questions you or other members of the Subcommittee may have.