



Service Women's Action Network (SWAN)  
123 William Street, 16th floor  
New York, NY 10038  
[www.servicewomen.org](http://www.servicewomen.org)  
646-602-5621 (work)  
212-533-4598 (fax)

---

October 19, 2009

Regulations Management (02REG)  
Department of Veterans Affairs  
810 Vermont Ave., NW, Room 1068  
Washington, DC 20420

**Re: RIN 2900-AN32--Stressor Determinations for Posttraumatic Stress Disorder**

Dear Sir or Madam:

The Service Women's Action Network (SWAN) would like to register its concerns regarding the Department of Veterans Affairs' (VA) proposal to amend its adjudication regulations governing service connection for posttraumatic stress disorder (PTSD).

SWAN is a nonprofit service organization founded to improve the welfare of current U.S. servicewomen and to assist all women veterans. SWAN offers personal support and guidance from fellow women veterans, provides referral and counseling services from military law experts and caseworkers, recommends sound policy reform to government officials, and educates the public about servicewomen's issues through various media outlets. Conceived as a support network by and for women veterans, SWAN serves all military women, regardless of era, experience, or time in service.

As written, this rule would liberalize the current evidentiary standard for establishing an in-service stressor provided that: 1) the claimed stressor is related to the veteran's fear of hostile military or terrorist activity, and 2) a VA psychiatrist or psychologist confirms that the claim is adequate to support a diagnosis of PTSD. In such cases, the veteran's lay testimony alone would be deemed to establish the occurrence of the claimed in-service stressor, and additional supporting evidence would no longer be required to corroborate the claim. The amendment is intended to acknowledge the determination of scientific studies "that military personnel deployed to a war zone, even if direct combat was not experienced, have the potential for exposure to deployment-related stressors that might elicit a stress response."

We appreciate the opportunity to comment on the Proposed Rule. SWAN wishes to focus this comment on evidentiary standards for victims of in-service sexual assault and harassment.

**I. The Proposed Rule fails to address the special challenges that confront military sexual assault victims face when seeking PTSD compensation benefits.**

Among the most pervasive stressors experienced by military women are incidents of sexual assault and harassment. By some accounts, nearly a third of female veterans report episodes of sexual assault during military service, while 71 to 90 percent report experiences of sexual harassment. These experiences are closely associated with PTSD in a variety of studies; in fact, military sexual assault is a stronger predictor of PTSD among women veterans than combat history.<sup>1</sup> Likewise, studies indicate that sexual harassment causes the same rates of PTSD in women as combat does in men.<sup>2</sup>

In spite of this correlation, the VA grants benefits to a significantly smaller percentage of female than male PTSD claimants.<sup>3</sup> This disparity stems largely from the difficulties of substantiating experiences of military sexual assault and harassment. Under military regulations, for example, sexual harassment investigations are only retained on file for two years from the close of each case.<sup>4</sup> While criminal investigations of sexual assault are better documented, 80% of assault victims fail to report the offense and over 20% of those who do file reports opt for a “restricted” mode that precludes official investigation.<sup>5</sup>

Although training and reference materials for raters provide a great deal of guidance on how combat medals and commendations may be used to support PTSD claims, they make little mention of how to address the challenges of documenting military sexual assault as an in-service stressor. As a result, reviewers tend to rely on a limited group of behavior changes in determining the validity of MST claims, often denying them if they fail to conform to a rigid set of expectations. Many raters, for example, deny MST claims from veterans with distinguished service records based on the assumption that assault victims invariably decline in their job performance.

While the Proposed Rule would extend a presumption of service-connection to veterans exposed to trauma during deployment, it fails to take account of those who experienced traumatic incidents outside of a combat arena. Statistics indicate that MST claimants would be particularly disadvantaged by this oversight; according to the Pentagon’s Sexual Assault Prevention and

---

<sup>1</sup> Maureen Murdoch, et al., “Gender Differences in Service Connection for PTSD,” *Medical Care* 41, no. 8 (2003), 950-961.

<sup>2</sup> Maureen Murdoch, et al., “The Association between In-Service Sexual Harassment and Posttraumatic Stress Disorder among Compensation-Seeking Veterans,” *Military Medicine* 171, no. 2 (2006), 166-173.

<sup>3</sup> Committee on Veterans’ Compensation for Posttraumatic Stress Disorder, Institute of Medicine and National Research Council of the National Academies, *PTSD Compensation and Military Service* (Washington DC: The National Academies Press, 2007), p. 192.

<sup>4</sup> Army Regulation 600–20, *EO/Sexual Harassment Complaint Processing System*, p. 97.

<sup>5</sup> U.S. Department of Defense, *FY08 Report on Sexual Assault in the Military*, p. 6.

Response Office (SAPRO), fewer than 10% of the assault incidents reported last year occurred in combat zones.<sup>6</sup>

**II. The Proposed Rule should be amended to include in-service personal assault, regardless of the site of the incident.**

Military Sexual Trauma is currently addressed in 38 CFR §3.304(f)(4), which stipulates that if a PTSD 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.” Specifically, such evidence may include “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.”

In the absence of formal records or statements, the occurrence of a personal assault may also be inferred from such behavioral developments as “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.” Given the imperfect nature of these behavioral cues, not to mention the obstacles to documenting in-service assault claims, the Proposed Rule should be amended to reduce this evidentiary burden.

Instead of requiring victims of in-service assault to submit the corroborating evidence described above, the VA should extend to these claimants the same evidentiary relief it proposes to afford to veterans who experienced trauma during deployment. In both cases, the agency should accept the veteran’s lay testimony alone as proof of the claimed stressor, provided that a VA psychiatrist or psychologist confirms that the claim is adequate to support a diagnosis of PTSD.

Thank you for considering these comments. SWAN urges the VA to issue a Final Rule that is consistent with its goals of reducing barriers to compensation for PTSD claimants and establishing greater parity between mental and physical disability claims. SWAN is committed to working with the VA on this important issue, and looks forward to a Final Rule that effectively achieves these objectives.

Respectfully submitted,

Rachel Natelson, Legal Advisor  
Service Women’s Action Network  
123 William Street, 16<sup>th</sup> Floor  
New York, NY 10038  
(646) 602-5622  
[rachel@servicewomen.org](mailto:rachel@servicewomen.org)

---

<sup>6</sup> *Id.*, at 41.