



## SWANALERT

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### SWAN Legal Director Discusses the Need for Military Sexual Trauma (MST) Claim Reform

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#### SEPARATE, UNEQUAL AND UNRECOGNIZED

In the weeks following the release of regulations designed to simplify the process by which veterans with PTSD can access benefits, advocates of every stripe have clamored to declare victory in a long-waged battle against a system notorious for resisting change. By eliminating the requirement that PTSD claimants provide documentary evidence to prove that their condition stems from their military experience, the Department of Veterans Affairs has indeed eased the path to compensation, justifying no small amount of celebration.

For some veterans, however, the struggle to secure compensation for service-induced trauma continues unabated. While the new PTSD rules recognize that women in uniform are increasingly likely to experience deployment-related stressors, they fail to respond to the single strongest predictor of PTSD for this population: military sexual trauma. The data supporting this causal link is sobering; studies not only reveal sexual assault to be a stronger predictor of PTSD for women veterans than combat history, but also suggest that sexual harassment causes the same rates of PTSD in women as combat does in men.



Despite this correlation, the VA grants benefits to a significantly smaller percentage of female than male PTSD claimants. This disparity stems largely from the difficulties of substantiating experiences of military sexual assault and harassment. To begin, at least 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. As underreported as sexual assault may be in civilian society, military culture poses a host of

additional barriers, ranging from lack of confidentiality to fear of punishment for collateral misconduct to impact on security clearance and availability for deployment.

In cases of sexual harassment, these cultural barriers are only exacerbated by an official policy of limited recordkeeping. At the direction of the Department of Defense, paper records of substantiated harassment cases are retained only two years after the closing of a complaint, and electronic files are erased from a Discrimination and Sexual Harassment (DASH) database after five years.

Given these obstacles to documentation, one would imagine that any effort to relax the evidentiary basis for accessing PTSD compensation would prioritize victims of in-service personal assault and harassment. In effect, however, the new PTSD rule applies only to veterans who have been exposed to stressors that trigger "fear of hostile military or terrorist activity," a provision that excludes those traumatized by the conduct of their brothers in arms. Similarly, the new rule covers only deployment-related stressors, overlooking the 90% of assault episodes that occur outside of a combat zone.

As a result, veterans with PTSD stemming from military sexual trauma (MST) must continue to assemble a welter of paperwork to document the veracity of their claims, while those who have experienced deployment-related stressors may simply submit a first-person statement along with a diagnosis from a VA medical provider.

Although MST claimants need not rely exclusively on information contained within their service records, they are required at a minimum to submit evidence in the form of law enforcement or counseling records, pregnancy or STD tests, and statements from fellow servicemembers.



Besides allowing personal discretion to eclipse objective criteria in claims determinations, this verification requirement too often translates into an excuse for protracted review, at times averaging close to a year in length. Perhaps the most significant aspect of the new PTSD rule is its potential to impose a shortcut on claims processors, who might otherwise delay their findings by demanding a perpetual flow of supporting documents.



Moreover, by specifying that a diagnosis from a VA medical provider is sufficient to establish eligibility for PTSD compensation, the new rule promises to alleviate an institutional practice of discounting agency treatment records in favor of one-time diagnostic exam results on the assumption that treating counselors and physicians are "biased" in favor of their patients. This trend is especially prevalent with PTSD claims, which the VA compensation

exam guide explicitly deems "easy to fabricate," advising examiners to supplement such claims with extensive documentation.

While most PTSD claimants need no longer bear the burden of such institutional distrust, sexual assault and harassment victims remain captive to its demands. If principles of basic fairness are insufficient to remedy this double standard, there are ample policy arguments to be made in favor of facilitating access to compensation for MST claimants. Not only are returning servicewomen nearly four times as likely as men to become homeless, but roughly 40% of those who experience homelessness also report having been sexually assaulted while in the military. If Secretary Shinseki is genuinely committed to ending homelessness among veterans, he must recognize that while the VA may discriminate against assault victims, trauma-induced hardship does not.

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