



Fact Sheet

July 12, 2010

New Regulations on PTSD Claims

Quick Facts:

- This new rule is for Veterans of any era.
 - The new rule will apply to claims:
 - received by VA on or after July 13, 2010;
 - received before July 13, 2010 but not yet decided by a VA regional office;
 - appealed to the Board of Veterans' Appeals on or after July 13, 2010;
 - appealed to the Board before July 13, 2010, but not yet decided by the Board; and
 - pending before VA on or after July 13, 2010, because the Court of Appeals for Veterans Claims vacated a Board decision and remanded for re-adjudication.
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QUESTIONS AND ANSWERS

“Stressor Determinations for Posttraumatic Stress Disorder”

1. What is Post-Traumatic Stress Disorder (PTSD)?

Post Traumatic Stress Disorder (PTSD) is a condition resulting from exposure to direct or indirect threat of death, serious injury or a physical threat. The events that can cause PTSD are called "stressors" and may include natural disasters, accidents or deliberate man-made events/disasters, including war. Symptoms of PTSD can include recurrent thoughts of a traumatic event, reduced involvement in work or outside interests, emotional numbing, hyper-alertness, anxiety and irritability. The disorder can be more severe and longer lasting when the stress is human initiated action (example: war, rape, terrorism).

2. What does this final regulation do?

This final regulation liberalizes the evidentiary standard for Veterans claiming service connection for post traumatic stress disorder (PTSD). Under current regulations governing PTSD claims, unless the Veteran is a combat Veteran, VA adjudicators are typically required to undertake extensive record development to corroborate whether a Veteran actually experienced the claimed in-service stressor. This final rulemaking will simplify and improve the PTSD claims adjudication process by eliminating this time-consuming requirement where the claimed stressor is related to “fear of hostile military

or terrorist activity,” is consistent with the places, types, and circumstances of their service, and a VA psychiatrist or psychologist, or contract psychiatrist or psychologist confirms that the claimed stressor is adequate to support a diagnosis of PTSD.

3. What types of claims for VA benefits does the final regulation affect?

The final regulation will benefit Veterans, regardless of their period of service. It applies to claims for PTSD service connection filed on or after the final regulation’s effective date, and to those claims that are considered on the merits at a VA Regional Office or the Board of Veterans’ Appeals on or after the effective date of the rule.

4. Why is this final regulation necessary?

The final regulation is necessary to make VA’s adjudication of PTSD claims both more timely and consistent with the current medical science.

5. How does this final regulation help Veterans?

The final regulation will simplify and streamline the processing of PTSD claims, which will result in Veterans receiving more timely decisions. A Veteran will be able to establish the occurrence of an in-service stressor through his or her own testimony, provided that: (1) the Veteran is diagnosed with PTSD; (2) a VA psychiatrist or psychologist, or a psychiatrist or psychologist with whom VA has contracted confirms that the claimed stressor is adequate to support a PTSD diagnosis; (3) the Veteran's symptoms are related to the claimed stressor; and (4) the claimed stressor is consistent with the places, types, and circumstances of the Veteran’s service and the record provides no clear and convincing evidence to the contrary. This will eliminate the requirement for VA to search for records, to verify stressor accounts, which is often a very involved and protracted process. As a result, the time required to adjudicate a PTSD compensation claim in accordance with the law will be significantly reduced.

5. How does VA plan to monitor the need for examiners in various regions of the country, and how does VA plan to respond if it is determined that more examiners are needed in a particular region?

The Veterans Health Administration (VHA) has written in to the FY11-13 Operating Plan the need for additional staff to support doing adequate, timely exams. VHA proposes: “A8. Increase mental health field staff to address the increase in C&P examinations and develop monitoring system to ensure clinical delivery of mental health services does not decrease in VHA.” Specifically, VHA has requested 125 clinicians for FY11 with additional 63 staff in FY12 if the need exists. If the Operating Plan and the proposed budget are approved, VA proposes asking the Veterans Integrated Service Networks (VISNs) to develop plans for distributing the funds in order to ensure adequate coverage at sites based on number of claims being processed; the VISNs are well positioned to determine these regional needs.

6. How does the regulatory revision affect PTSD service connection claims where an in-service diagnosis of PTSD has been rendered?

The new regulation does not apply to the adjudication of cases where PTSD has been initially diagnosed in service. Rather, under another VA rule, 38 CFR § 3.304(f)(1), if a Veteran is diagnosed with posttraumatic stress disorder during service and the claimed

stressor is related to that service, in the absence of clear and convincing evidence to the contrary, and provided that the claimed stressor is consistent with the circumstances, conditions, or hardships of the Veteran's service, the Veteran's lay testimony alone may establish the occurrence of the claimed in-service stressor.

7. Is the new regulation applicable only if the Veteran's statements relate to combat or POW service?

No. The rule states that the stressor must be related to a “fear of hostile military or terrorist activity,” and the claimed stressor must be “consistent with the places, types, and circumstances of the veteran’s service.”

8. What circumstances will still require stressor verification through DoD’s Joint Services Records Research Center (JSRRC) , VBA’s Compensation & Pension Service (C&P Service), or other entity if a Veteran claims that his or her stressor is related to a fear of hostile or terrorist activity?

The regulatory revision will greatly lessen the need for undertaking development to verify Veterans’ accounts of in-service stressors. Now, stressor development may only need to be conducted if a review of the available record, such as the Veteran’s service personnel and/or treatment records, is inadequate to determine that the claimed stressor is “consistent with the places, types and circumstances of the veteran’s service.” In such circumstances, the Veterans Service Representative (VSR) will determine on a case-by-case basis what development should be undertaken.

However, it is anticipated that in the overwhelming majority of cases adjudicated under the new version of § 3.304(f), a simple review of the Veteran’s service treatment and/or personnel records will be sufficient to determine if the claimed stressor is consistent with the places, types, and circumstances of the Veteran’s service. We also believe that, in some cases, a Veteran’s separation document, DD-Form 214, alone may enable an adjudicator to make such a determination.

9. As the regulatory revision seems to require an enhanced role for the examining VA mental health professional, whose role is it to determine whether the claimed stressor is consistent with the Veteran’s service?

VA adjudicators, not the examining psychiatrist or psychologist, will decide whether the claimed stressor is consistent with the Veteran’s service.

10. Is a Veteran's testimony about “fear of hostile military or terrorist activity” alone sufficient to establish a stressor?

Yes, if the other requirements of the regulation are satisfied, i.e., a VA psychiatrist or psychologist confirms that the claimed stressor is adequate to support a PTSD diagnosis and that the Veteran's symptoms are related to the claimed stressor, and the stressor is consistent with the “places, types, and circumstances of the Veteran’s service.”

11. Are the stressors accepted as adequate for establishing service connection under new § 3.304(f)(3) limited to those specifically identified in the new regulation?

No. The examples given in the revised regulation do not represent an exclusive list in view of the use of the modifying phrase “such as” that precedes the listed examples. Any

event or circumstance that involves actual or threatened death or serious injury, or a threat to the physical integrity of the Veteran or others, would qualify as a stressor under new § 3.304(f)(3).

12. How will the Veterans Health Administration (VHA) work with Veterans Benefits Administration (VBA) on the new regulation?

VHA was actively involved in discussion with VBA of the new regulation and fully supports the new regulation.

- The new regulation will provide fair evaluation for Veterans whose military records have been damaged or destroyed, or for whom no definitive reports of combat action appeared in their military records, even though they can report such actions and it is reasonable to believe that these occurred, given the time and place of service.
- This will be especially beneficial to women Veterans, whose records do not specify that they had combat assignments, even though their roles in the military placed them at risk of hostile military or terrorist activity.
- This means that more Veterans will become eligible for VA care and thus be able to receive VA care for mental illness related to their military service, as well as receiving full holistic health care. VHA will work actively with VBA on implementing the regulation. VHA staff's main role is as clinicians conducting C&P interviews to establish diagnoses and obtain other information to be used by VBA raters to determine the outcome of claims.
- The new regulation will not change the diagnostic elements of the C&P interview, but may change what additional data are collected for use by VBA raters.