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Fact Sheet

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New Regulations on PTSD Claims

Background:

On Monday, July 12, 2010, the Department of Veterans Affairs (VA) is scheduled to publish a final regulation that will make access to care and the claims process easier for Veterans seeking compensation for Post-Traumatic Stress Disorder (PTSD). The rule reduces the evidence needed if the PTSD stressor claimed by a Veteran is related to fear of hostile military or terrorist activity and is consistent with the places, types, and circumstances of the Veteran's service.

PTSD is a recognized anxiety disorder that can develop from seeing or experiencing an event that involves actual or threatened death or serious injury to which a person responds with intense fear, helplessness or horror, and is not uncommon among war Veterans.

Under the new rule, VA will not require corroboration of a PTSD stressor related to fear of hostile military or terrorist activity if a VA psychiatrist or psychologist confirms that the stressful experience recalled by a Veteran adequately supports a diagnosis of PTSD and the Veteran's symptoms are related to the claimed stressor.

Previously, VA required non-combat Veterans to corroborate the fact that they experienced a PTSD stressor related to hostile military activity. This final rule simplifies the development that is required for these cases.

VA expects this rulemaking to decrease the time it takes VA to decide disability claims and access to health care, falling under the revised criteria and for Veterans to access health care. More than 400,000 Veterans currently receiving compensation benefits are service connected for PTSD. If service connection for PTSD is established under the new rule, a Veteran disabled by PTSD will be entitled to disability compensation, which is a tax-free benefit paid to a Veteran for disabilities that are a result of -- or made worse by -- injuries or diseases associated with active service.

Quick Facts:

- The new rule will simplify and streamline the processing of PTSD claims, reducing the time and frustration traditionally involved when Veterans apply for disability compensation for PTSD and access for mental health care.

- Veterans who do not otherwise meet eligibility requirements for enrollment in the VA health care system cannot receive mental health treatment at a VA facility without a disability rating from VA.
 - This new rule is for Veterans of any era.
 - This decision is consistent with recent Institute of Medicine studies of scientific data.
 - The new rule will apply to claims:
 - received by VA on or after July 12, 2010;
 - received before July 12, 2010 but not yet decided by a VA regional office;
 - appealed to the Board of Veterans' Appeals on or after July 12, 2010;
 - appealed to the Board before July 12, 2010, but not yet decided by the Board; and
 - pending before VA on or after July 12, 2010, because the Court of Appeals for Veterans Claims vacated a Board decision and remanded for re-adjudication.
 - Not all combat wounds are visible. For decades, VA has led the health-care community in treating and researching the psychological wounds of war, especially PTSD.
 - Since the start of combat in Iraq and Afghanistan, VA has dramatically expanded the number of its mental health professionals to care for returning Veterans, including 1,000 just last year alone.
 - VA will continue its world-class research program and its aggressive outreach to returning Veterans. The Department is committed to continuing to improve its processes to meet the needs of our newest generation of heroes.
 - VA will continue to verify war deployments with the Department of Defense (DoD) to protect our Veterans from the backlash against any attempts at fraud.
 - VA is the largest integrated health care system in the Nation and consistently ranks at the top, or near the top for quality and safety by various sources to include seven US News World Reports' "Top US hospitals," and HHS's & Medicare Hospital Comparison metrics.
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QUESTIONS AND ANSWERS

For VA Final Rule AN 32

“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.

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