



CONGRESSIONAL TESTIMONY

STATEMENT FOR THE RECORD

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO

PROVIDED TO THE

HOUSE COMMITTEE ON VETERANS' AFFAIRS

SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS

SUBCOMMITTEE ON HEALTH

HEARING ON

SUPPORTING SURVIVORS: ASSESSING VA'S MILITARY SEXUAL TRAUMA PROGRAMS

NOVEMBER 17, 2021

Chairwoman Luria, Chairwoman Brownley, Ranking Member Nehls, Ranking Member Bergman, and Members of the Subcommittees:

The American Federation of Government Employees, AFL-CIO and its National Veterans Affairs Council (AFGE) appreciate the opportunity to provide our views on today's joint Subcommittee on Disability Assistance and Memorial Affairs (DAMA) and Subcommittee on Health hearing titled, "Supporting Survivors: Assessing VA's Military Sexual Trauma Programs."

AFGE represents more than 700,000 federal and District of Columbia government employees, 260,000 of whom are dedicated Department of Veterans Affairs (VA) employees. Our membership includes employees who work with Military Sexual Trauma (MST) claims throughout the claims process, starting with the Veterans Benefits Administration (VBA) claims processors who develop and rate claims, the VA clinicians who perform disability exams or compensation and pension (C&P) exams for MST claims for the Veterans Health Administration (VHA), as well as attorneys at the Board of Veterans' Appeals (BVA) who work on MST claims appeals within the BVA. AFGE also represents VHA MST Coordinators who help ensure MST care is implemented correctly at VHA facilities across the nation.

After the thorough work of the Office of the Inspector General (OIG) in issuing its reports titled "Improvements Still Needed in Processing Military Sexual Trauma Claims"¹ and "Challenges for Military Sexual Trauma Coordinators and Culture of Safety Considerations,"² AFGE welcomes the opportunity to provide the frontline worker perspective of the MST claims

¹ VA OIG, *Improvements Still Needed in Processing Military Sexual Trauma Claims*, Report No. 20-00041-163. August 5, 2021.

² VA OIG, *Challenges for Military Sexual Trauma Coordinators and Culture of Safety Considerations*, Report No. 20-01979-199. August 5, 2021.

process, make recommendations to improve the processing of MST claims, and help ensure that veterans who suffer from these terrible ordeals get the benefits and care they need at the VA.

Background on MST claims processing:

As the OIG report “Improvements Still Needed in Processing Military Sexual Trauma Claims”³ describes in detail, there continues to be a significant error rate in the processing of MST claims. In a follow up to its 2018 report on MST claims,⁴ the OIG thoroughly describes the problems that VBA has in processing MST claims, illuminated by the fact that despite the OIG’s initial recommendations, the OIG “estimated that about 57 percent of denied military sexual trauma claims were still not being processed correctly from October 1 to December 31, 2019, which was not an improvement from the 49 percent rate noted in the August 2018 report covering the period from April 1 to September 30, 2017.”⁵

In its new report, “[t]he OIG determined that VBA did not effectively implement the six recommendations [made by the OIG in 2018], which led to continued deficiencies with military sexual trauma claims processing. Implementation was ineffective in part because VBA was not adequately governing the processing of military sexual trauma claims or providing sufficient oversight to confirm processing deficiencies identified in the August 2018 report were corrected.”⁶ As the OIG analyzes the VBA’s failure to implement the recommendations made by the OIG, AFGE would like to offer a practical perspective on four of the six

³ VA OIG, *Improvements Still Needed in Processing Military Sexual Trauma Claims*, Report No. 20-00041-163. August 5, 2021.

⁴ VA OIG, *Denied Posttraumatic Stress Disorder Claims Related to Military Sexual Trauma*, Report No. 17- 05248-241, August 21, 2018.

⁵ VA OIG, *Improvements Still Needed in Processing Military Sexual Trauma Claims*, Report No. 20-00041-163. August 5, 2021 at ii.

⁶ *Id* at 11.

recommendations, and identify ways for VBA to enable employees to perform more effectively going forward.

AFGE Comments on OIG by recommendation number in relation to VBA:

Recommendation 2:

Of the six OIG recommendations, the second 2018 recommendation was that “[t]he Under Secretary for Benefits focuses processing of military sexual trauma-related claims to a specialized group of Veterans Service Representatives and Rating Veterans Service Representatives.”⁷ AFGE has long advocated to the DAMA Subcommittee that it support the specialization of Veterans Service Representatives (VSRs) and Rating Veterans Service Representatives (RVSRs) within VBA. Despite the problems VBA has encountered in fully implementing this recommendation,⁸ AFGE supports its intent, and calls for the rectification of other chronic problems in treating claims processors fairly.

Historically, AFGE fiercely opposed the elimination of specialization of VSRs and RVSRs after the implementation of the National Work Queue (NWQ). This position remains particularly relevant regarding the elimination of the former “Special Operations Lane,” where employees were tasked with the processing of highly complex and sensitive claims. When RVSRs and VSRs worked in the “Special Operations Lane,” they were given weighted or “bumper” credit on the claims they worked on to recognize the complexity of these claims, and in turn were expected to complete fewer overall claims. When these lanes, including the “Special Operations Lane” were eliminated, all VSRs and RVSRs were expected to work on all

⁷ VA OIG, *Denied Posttraumatic Stress Disorder Claims Related to Military Sexual Trauma*, Report No. 17- 05248-241, August 21, 2018 at 14.

⁸ VA OIG, *Improvements Still Needed in Processing Military Sexual Trauma Claims*, Report No. 20-00041-163. August 5, 2021 at 14.

types of claims with no specialization, and no extra credit was awarded based on the complexity of the claim. At the time the OIG issued the 2018 recommendation to assign MST claims to specialized VSRs and RVSRs, these employees were not given additional performance credit for working on these claims nor were they given additional credit after the OIG's recommendations were made. VBA attempted to address this issue in 2021, with VSRs and RVSRs now having the potential to receive minimal additional credit for processing MST claims, however that too remains problematic.

Despite changes for MST claims, if a RVSR determines that an MST claim is not ready to rate, and defers the case to wait for more information, that RVSR will not receive any credit for the parts of the claim that were deferred. This is despite RVSRs spending significant time on the claim and acting in the best interests of the veteran to not make a premature rating decision, regardless of what the decision may be. AFGE strongly urges the VBA, particularly for MST claims, to give credit for all work performed, regardless of whether a final determination is made, and do what is in the best interest of the veteran and their long-term care and benefits. Moreover, while MST claims now receive some additional work credit for what is performed, VBA still does not give credit commensurate with the complexity of these claims. At a minimum, VBA should increase the amount of weighted or "bumper" credit it gives on MST claims to a similar amount as it gives to for toxic exposure claims authorized by the *Nehmer* decision⁹ and its subsequent cases, as well as the Blue Water Navy Vietnam Veterans Act.¹⁰

⁹ See *Nehmer v. United States Veterans Admin.*, 712 F. Supp. 1404 (N.D. Cal. 1989).

¹⁰ The Blue Water Navy Vietnam Veterans Act of 2019 (PL 116-23).

Recommendation 3:

The third recommendation made by the OIG was that “[t]he Under Secretary for Benefits requires an additional level of review for all denied military sexual trauma-related claims and holds the second-level reviewers accountable for accuracy.”¹¹ Unfortunately, according to the OIG, VBA was unsuccessful in fully implementing this recommendation.¹² AFGE also represents employees who are part of VBA’s “Quality Review Team” (QRT) and were responsible for providing the second level review for RVSRs until certain requirements were met. However, unlike the changes that VBA is beginning to make for VSRs and RVSRs and providing additional credit for MST claims, that change is not occurring for QRT employees. This means that QRT employees continue to receive more difficult work without a corresponding change in their performance metrics. Given the complex, sensitive, and detail focused nature of MST claims, the VBA should also give corresponding additional credit to QRT members working on MST claims.

Recommendation 5:

The fifth recommendation made by the OIG was that “[t]he Under Secretary for Benefits updates the current training for processing military sexual trauma-related claims, monitors the effectiveness of the training, and takes additional actions as necessary.”¹³ AFGE has always supported training VBA employees to ensure that they have the tools required to perform their jobs successfully and properly serve veterans. Unfortunately, “[a]lthough VBA updated the

¹¹ VA OIG, *Denied Posttraumatic Stress Disorder Claims Related to Military Sexual Trauma*, Report No. 17- 05248-241, August 21, 2018 at 14.

¹² VA OIG, *Improvements Still Needed in Processing Military Sexual Trauma Claims*, Report No. 20-00041-163. August 5, 2021 at 15.

¹³ VA OIG, *Denied Posttraumatic Stress Disorder Claims Related to Military Sexual Trauma*, Report No. 17- 05248-241, August 21, 2018 at 14.

training, supervisors did not confirm processors working on military sexual trauma claims had taken it.”¹⁴ Beyond making sure that all VBA employees have the appropriate training they need to work on MST claims prior to being assigned those claims, AFGE urges VBA to make changes in determining what is in the training itself, specifically, including VBA employees and their labor representatives in determining what should be included and focused on. The frontline employees AFGE represents are the ones actually processing claims, and taking their input into account as to what would be helpful when designing curriculum and addressing the complexities and issues they encounter every day would benefit veterans more than having training designed from the top down.

Recommendation 6:

The sixth recommendation made by the OIG was that “[t]he Under Secretary for Benefits updates the development checklist for military sexual trauma-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 military sexual trauma-related claim.”¹⁵ AFGE supports the intent of making sure the VSRs, RVSRs, and other VBA employees process claims accurately. Unfortunately, when designing the performance standards for these employees, VBA did not modify the performance standards to take into account these extra steps, nor does it award performance credit for completing these extra steps. This effectively makes it more difficult for employees to meet their performance standards and inadvertently encourages employees to rush

¹⁴ VA OIG, *Improvements Still Needed in Processing Military Sexual Trauma Claims*, Report No. 20-00041-163. August 5, 2021 at 17.

¹⁵ VA OIG, *Denied Posttraumatic Stress Disorder Claims Related to Military Sexual Trauma*, Report No. 17- 05248-241, August 21, 2018 at 14.

through the processing of claims to meet their metrics, which is counter to VBA's stated intent, particularly with respect to MST claims. AFGE urges that VBA make sure that all work an employee is required to complete is counted in their performance metrics and encourages the VBA to prioritize quality in claims processing instead of artificial quantity standards.

Disability Exams in MST Claims:

As part of the MST claims process, veterans must often get a disability exam, most commonly a compensation and pension (C&P) exam, to help determine if the veteran has a service-connected disability. AFGE has advocated over many years to the DAMA Subcommittee that the VA must recognize that veteran-centric medicine is itself a specialty and has stressed both the importance of the training and expertise required to conduct high-quality C&P exams, and that these exams should be performed by VA medical personnel. AFGE strongly agrees with the reasoning that Chairwoman Luria put in her letter to President Biden that VA C&P medical personnel have built extensive experience in both observing specific veteran health care conditions and developing the ability to readily recognize and observe the subtle symptoms of veteran centric medical conditions for which the veteran is being examined, and that "may be alien to a civilian practitioner."¹⁶ Complex conditions, including MST claims, are more likely to be noticed by a clinician with significant experience performing C&P exams and should be exclusively performed by VA personnel. Additionally, for certain exams that are particularly sensitive in nature, such as MST or PTSD, if an exam upsets a veteran and they are

¹⁶ Letter from Chairwoman Luria and nine other Members of Congress to President Joseph R. Biden. January 28, 2021.
https://luria.house.gov/sites/luria.house.gov/files/wysiwyg_uploaded/2021.01.28%20Member%20Letter%20to%20President%20Biden%20Re%20CP%20Exam%20Program.pdf.

in a VA facility, there are VA mental health providers on site who can assist in an emergency, instead of occurring in contractor's office where personnel are unequipped to help.

For this additional reason, AFGE again urges the committee to mandate that all disability exams for MST claims are performed by eligible VA clinicians at VA facilities.

The Board of Veterans' Appeals:

AFGE is proud to represent over 900 attorneys who work at the Board of Veterans' Appeals (BVA) and appreciated the opportunity to testify before the DAMA Subcommittee at its July 13, 2021, hearing titled "VA Appeals Program: Examining the State of Modernization Efforts." BVA attorneys are proud of the work that they do to help veterans and recognize the importance of their role helping veterans finalize their claims, particularly on sensitive claims such as those related to MST. As the subcommittee considers legislation addressing MST claims, particularly at the BVA, AFGE takes this opportunity to thank both the majority and minority professional staff of the DAMA Subcommittee for working with AFGE to improve legislative text related to how BVA attorneys must handle MST claims. It is important that new legislative proposals protect veterans with MST claims from re-traumatization during the appeals process, while also not overly restricting BVA attorneys from performing their duties and slowing down the appeals process.

VHA MST Coordinators:

AFGE is proud to represent VHA MST Coordinators throughout the nation who play a vital role in making sure that MST care is properly administered in VA facilities. As MST Coordinators, these employees have the responsibility to:

“support the implementation of national and VISN MST-related care policies, serve as the POC for patient and staff MST issues, establish and monitor MST-related staff training and informational outreach to the facility and community, develop partnerships within the facility to support MST-related care and education, and provide ongoing communication with “national, VISN, and facility-level leadership” and other stakeholders.”¹⁷

However, despite this wide range of responsibility, the VA only requires that “[t]he MST Coordinator ‘must be given protected time, typically at least’ 0.2 full-time equivalent employee...”.¹⁸ While on its face this seems to be insufficient time to fulfill all of these obligations, it is even more apparent after looking deeper into the OIG’s findings.

As part of its report, the OIG conducted a study of 158 MST Coordinators between August 10, 2020 to August 21, 2020, and received 136 responses.¹⁹ “Of the 136 MST Coordinators, 53 (39 percent) reported that they did not have adequate resources to fulfill their MST Coordinator administrative responsibilities.”²⁰ The OIG further explains that “over half (64 percent) of the 53 respondents who reported inadequate resources identified insufficient protected time to fulfill MST Coordinator responsibilities. MST Coordinators specified that additional time would allow them to provide more MST-related services and programs.”²¹ Additionally, “[o]f the 136 MST Coordinators who responded to the survey, 50 (37 percent) reported having administrative assistance and 86 (63 percent) reported not having administrative

¹⁷ VA OIG, “Challenges for Military Sexual Trauma Coordinators and Culture of Safety Considerations, Report No. 20-01979-199. August 5, 2021 at 7; Citing to VHA Directive 1115.

¹⁸ *Id.* At 6; Citing to VHA Directive 1115.

¹⁹ *See id.* At 10.

²⁰ *Id.* At 12.

²¹ *Id.* At 13.

assistance to support their MST Coordinator responsibilities. Approximately one third (32 percent) of the 53 MST Coordinators who reported inadequate resources noted that the addition of administrative support would be helpful.” The OIG also identified that “[o]f the 53 MST Coordinators, 15 (28 percent) described a lack of funding and program materials for outreach, education, and special projects.”²²

To address these issues, AFGE agrees in principle with the recommendation of the OIG that “[t]he Under Secretary for Health evaluates the sufficiency of current guidance and operational status regarding protected administrative time, administrative staff support, and funding for outreach, education, and special project resources, with consideration of the Military Sexual Trauma Coordinators’ responsibilities, and takes action as warranted.” AFGE urges the Undersecretary for Health recognize both the importance of the MST Coordinator position and time required to perform the responsibilities involved. In turn, the Undersecretary should both increase the minimum dedicated time for an MST Coordinator above 20 percent of a single employee’s duty time and hire more administrative support to allow the MST Coordinators to better perform their duties.

AFGE appreciates both the Subcommittee on Disability Assistance and Memorial Affairs and the Subcommittee on Health holding this important hearing, and we look forward to working with the entire House Veterans’ Affairs Committee to find ways to improve the processing of MST claims and ensure that MST care is properly coordinated at VA facilities.

²² *Id.* At 16.