

**STATEMENT OF
GERARDO AVILA, DEPUTY DIRECTOR DOD BOARDS, MEB/PEB
NATIONAL VETERANS AFFAIRS AND REHABILITATION DIVISION
THE AMERICAN LEGION
BEFORE THE
SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
ON
"VBA'S PROCESSING OF CLAIMS FOR BENEFITS BASED ON POST-TRAUMATIC
STRESS DISORDER"**

July 25, 2017

The Department of Veterans Affairs (VA) National Center for Post-Traumatic Stress Disorder (PTSD) defines PTSD as "a mental health problem that some people develop after experiencing or witnessing a life-threatening event, like combat, a natural disaster, a car accident, or sexual assault."¹ The nature of serving in the armed forces is inherently dangerous; fear of hostility, combat operations, military sexual trauma (MST), and the dangers of training operations are only some of the causes that could eventually lead to a PTSD diagnosis.

PTSD affects each generation of veterans. The National Center for PTSD estimates 11-20 percent of veterans of Operation Iraqi Freedom (OIF) and Operation Enduring Freedom (OEF) suffer from the condition; an estimated 12 percent of Operation Desert Storm veterans have PTSD, and 15 percent of Vietnam War veterans also suffer from PTSD, according to the most recent VA study conducted in the late 1980s. VA estimates that 30 percent of Vietnam War veterans have suffered from PTSD at some point during their life².

Chairman Bost, Ranking Member Esty, and distinguished members of the Subcommittee on Disability Assistance and Memorial Affairs (DAMA), on behalf of National Commander Charles E. Schmidt and The American Legion; the country's largest patriotic wartime service organization for veterans, comprising over 2 million members and serving *every* man and woman who has worn the uniform for this country; we thank you for the opportunity to testify regarding The American Legion's position on "VBA's Processing of Claims for Benefits Based on Post-Traumatic Stress Disorder".

Background

In July 2010, VA took significant strides towards assisting veterans suffering from PTSD. The liberalization of regulations relaxed the need for veterans to provide proof of a PTSD stressor; instead, veterans only needed to prove a "fear of hostility." Former VA Secretary Eric Shinseki recognized the importance of the liberalization and added, "This final regulation goes a long

¹ [National Center for PTSD](#)

² [PTSD: National Center for PTSD](#)

way to ensure that veterans receive the benefits and services they need." The American Legion concurred with the former Secretary and lauded the efforts to streamline the access to benefits. While The American Legion acknowledges advancements in this area, we also know there is significant room for improvement. From development of PTSD claims, through compensation and pension (C&P) examinations, to ultimate adjudication, American Legion accredited representatives routinely see errors throughout the process. Furthermore, if a veteran seeks service connection for a physical condition that manifested secondary or was aggravated by PTSD, veterans routinely are faced with a difficult journey.

Development of PTSD Claims

Improvement in the development of PTSD claims improved significantly following the July 2010 liberalization and has led to greater uniformity in relating PTSD to being deployed to hostile areas. VA's veterans service representatives are more likely to request C&P examinations, leading veterans to not receive VA disability compensation but gain access to VA healthcare.

The July 2010 liberalization was not the first instance of relaxing standards for PTSD. VA relaxed the standard for gaining service connection for PTSD related to military sexual trauma (MST) in 2002. The frequency and impact of MST among servicemembers and veterans is intolerable. VA reported in May 2015 that 25 percent of female veterans and one percent of male veterans experienced military sexual trauma when screen by a VA provider³.

Though VA relaxed MST-related PTSD claims, the implementation and effectiveness of that relaxation has not been enjoyed in the same manner as combat related PTSD claims. Recent reports have highlighted the complications regarding reports associated with MST. Command cover-up, lack of military or civilian law enforcement records, and lack of medical records are some of the myriad reasons why claimants are unsuccessful in gaining service connection.

It is extremely frustrating to veterans that experience such degradation by fellow servicemembers and then receive a denial of benefits post-service. American Legion service officers often submit lay statements from family members or friends that corroborate the incident, only to have the lay statements ignored or disputed. PTSD caused by MST often can only be corroborated by family members or friends, and VA's failure to regularly utilize these key documents is harmful to veterans.

C&P Examinations

The PTSD disability benefits questionnaire (DBQ) has created a uniform examination process that provides medical professionals with a list of symptoms and severity of symptoms experienced by the veteran. DBQs have proven a useful way to providing a uniform method of providing the necessary questions and ensuring the appropriate information is transferred to the Veterans Benefits Administration (VBA) for establishing the level of service connection. In

³ [Military Sexual Trauma](#)

theory, the veteran in Los Angeles should be receiving the same C&P examination for PTSD as the veteran in Atlanta.

Complaints pertaining to C&P examinations from veterans do not generally surround the DBQ; it surrounds the manner and method the examinations are conducted. Veterans have complained of C&P examinations that last 10-15 minutes and examiners that question the veracity of their symptoms or severity. Additionally, examiners have detailed significant and severe symptoms; however, when evaluating the level of occupational and social impairment provide a response that do not align with the level of severity reported in the DBQ.

A recent issue has developed regarding C&P examinations provided by VBA contracted examinations. Within the last six months, American Legion service officers have noted the quality of re-examinations for PTSD. Despite having months of continual treatment by VA for the condition with records indicating the severity of the condition, some contracted examiners indicate the veteran's symptoms are significantly less severe than indicated by VA treatment records. Ironically post-C&P examination, VA treatment records continue to show the previously indicated more severe symptoms.

The impact of C&P exams are highly critical in determining service connection and the level of disability. Symptoms experienced and the severity of the symptoms are the foundation of establishing the level of disability within the VA Schedule for Rating Disabilities. Due to this fact, it is absolutely essential that C&P examiners conduct a *thorough* review of records, to include lay statements, to ensure veterans' conditions are properly evaluated.

Secondary Conditions Related to PTSD

The National Center for PTSD published an article by Kay Jankowski, Ph.D., regarding the impact of PTSD upon physical health. Dr. Jankowski acknowledged "a growing body of literature has found a link between exposure to trauma and poor physical health" and added research exists regarding the relationship between PTSD and cardiovascular, gastrointestinal, and musculoskeletal conditions.⁴

Veterans are often diagnosed with PTSD at a relatively young age. Years of suffering with the condition could cause or aggravate physical conditions, as suggested by Dr. Jankowski. Unfortunately, veterans are often denied or not even provided the opportunity to have a C&P examination to determine the relationship between the physical condition and PTSD.

Sadly, some within VBA do not believe that a relationship exists, despite the fact that VA has published articles suggesting the existence of the relationship. In 2015, The American Legion met with senior leaders at a VA regional office (VARO). The topic of the relationship between cardiovascular health and PTSD was discussed, as we noticed frequent remands from the Board of Veterans' Appeals regarding this issue. The veterans service center manager declared no relationship exists and added that her husband was unsuccessful at connecting the two

⁴ [National Center for PTSD](#)

conditions for his VA claim. Perhaps he should have enlisted the help of an American Legion service officer.

When further pressed on the issue, she demanded to produce a medical study discussing the relationship. The American Legion immediately provided a study suggesting the relationship issued by VA's Published International Literature on Traumatic Stress. We realize that each case is different; we realize that medical professionals may have different opinions. However, we believe a trained medical professional should make that determination and not a VBA employee.

PTSD and Total Disability Due to Individual Unemployability

An unfortunate impact of PTSD is that it can eventually lead to a veteran's inability to gain and sustain meaningful employment. This leads to the veteran qualifying for total disability due to individual unemployability (TDIU) benefits. Unfortunately, unless the veteran specifically applies for this benefit, TDIU may not be awarded.

Annually, The American Legion conducts VARO visits as part our Regional Office Action Review (ROAR) program. In March 2016, The American Legion visited the Cleveland VARO to review recently adjudicated appealed claims.

During the visit, we reviewed a claim of a Marine veteran that filed to increase his 50 percent PTSD disability rating in March 2010 and stated he could not work due to PTSD. His wife provided a letter in May 2010 indicating the veteran's inability to work due to PTSD and documentation from the Social Security Administration (SSA) indicating he is unable to work due to a psychiatric disorder. Eleven months later, the veteran received a rating decision stating, "Social Security records dated February 3, 2010 noted your isolation and irritability. The examiner on your Mental Residual Functional Capacity Assessment provided that you are unable to work in proximity to other people due to extensive social discomfort and you are unable to complete work behaviors in a typical work environment due to your psychiatric conditions. You are currently receiving Social Security for your affective disorders and your anxiety related disorders."

In March 2012, the veteran filed a notice of disagreement, and nearly four years later, in February 2016, he received a decision increasing his disability rating for PTSD to 70 percent. Unfortunately, the veteran still was not receiving TDIU; however, he continued to receive social security disability benefits.

The American Legion reviewed the appeal in March 2016. The veteran's documentation strongly suggested consideration for TDIU existed, and we demanded VA to take action. VA conducted a C&P examination in April 2016, and the examiner agreed with SSA and opined the veteran's PTSD caused unemployability. The American Legion's questions combined with a positive opinion indicating the veteran's PTSD caused unemployability led to an eventual grant of the benefit. VA did retroactively award the benefit to May 2010 and received a retroactive award in excess of \$96,000.

Had The American Legion’s ROAR team not visited this location and reviewed the appeal, this veteran may have never received TDIU, and if he did, it is uncertain if he would have received the same effective date. This case serves as an example of the need for VBA employees and C&P examiners to perform a careful and *thorough* review of the record. This veteran should not have had to wait four years to have an appeal adjudicated, and he certainly should not have had to wait six years for the proper awarding of his TDIU benefits.

Evaluation Builder Tool

The creation and implementation of VBA’s Evaluation Builder tool has also led to improper denials or an under evaluation of claims. VBA created the tool to develop uniform decisions; a rater at one VARO should have similar decisions as a rater at a different VARO. Unfortunately, nearly whole dependence on the tool has created missed opportunities.

In 2017, The American Legion has asked VBA employees during ROAR visits about the tool. Raters have the capability to disregard the tool’s suggestion; however, the local quality review team is notified, and many fear reprisal if they continually challenge the tool’s suggestion. Quite simply, they do not want to a label of being a difficult employee.

No concern would exist if the tool were 100 percent effective. The American Legion understands that not all information receives consideration in the tool. Lay statements, continuity of symptoms, or outside private medical evidence may not be considered and significantly influence a decision.

The American Legion believes the Evaluation Builder tool could greatly assist raters. However, there requires flexibility. Raters should be encouraged to challenge the tool and not fear reprisal. In fact, challenges to the tool’s system would lead to better development of the product; VA should welcome this input. Finally, the decisions should not solely reflect the suggestion of the tool; it is essential consideration of all pertinent records occur.

Conclusion:

The American Legion has long recognized the impact of PTSD within the veterans’ community. We have worked with those that have been affected by horrors of combat and MST. During our 96th National Convention in 2014, we resolved to, “Urge the VA to review military personnel files in all MST claims and apply reduced criteria to MST-related PTSD to match that of combat-related PTSD”⁵. VA has taken significant strides in improving its recognition of veterans deployed to hostile lands; however, VA still needs improvement in MST-related PTSD claims, C&P examinations, and evaluations of disabilities. The American Legion thanks this committee for their diligence and commitment to our nation’s veterans on this topic. Questions concerning this testimony can be directed to Derek Fronabarger Deputy Director in The American Legion Legislative Division (202) 861-2700 or at dfronabarger@legion.org.

⁵ American Legion Resolution No. 67: (2014): [Military Sexual Trauma](#)

**BIOGRAPHY OF GERARDO AVILA
DEPUTY DIRECTOR, MEB, PEB & DOD BOARDS
THE AMERICAN LEGION
VETERANS AFFAIRS AND REHABILITATION DIVISION**

Gerardo Avila joined The American Legion in March of 2013. Currently, Gerardo serves as the Deputy Director for Medical Evaluation Board (MEB), Physical Evaluation Board (PEB) and Department of Defense (DoD) Boards.

Gerardo enlisted into the Army in October 1991. He completed Basic Combat Training and Advanced Individual Training at Fort Benning, GA and was awarded the military occupational specialty of 11B, Infantry.

Gerardo has held leadership positions from team leader to Platoon Sergeant. His first duty assignment was as M60 machine gunner and scout team leader with the 25th Infantry Division Light, Schofield Barracks, HI. He was then assigned to the 101st Airborne Division, Fort Campbell, KY where he served as infantry and pathfinder team leader. His next assignment was with the 1st Bn 5th Infantry Regiment, Schofield Barracks, HI as squad leader. He was then assigned as Platoon Sergeant in the 1st Brigade 25th Infantry Division “Stryker”, Fort Lewis, WA where he deployed in support of Operation Iraqi freedom in 2004. His final assignment was as senior enlisted advisor at the United States Military Academy Preparatory School, Fort Monmouth, NJ and West Point, NY. Gerardo retired in December 2012.

Gerardo’s military awards include The Legion of Merit, Purple Heart, Meritorious Service Medal 2nd Award, Army Commendation Medal 5th Award, Army Achievement Medal 4th Award, The Expert Infantryman’s Badge, Senior Parachutes Badge, Air Assault Badge, Ranger Tab, and The Pathfinder Badge.

Gerardo’s military education includes the Primary Leadership Development Course, Basic Non-Commissioned Officers Course, Advanced Non-Commissioned Officers Course, Battle Staff Course, Airborne School, Ranger School, Air Assault School, Pathfinder School, and Jumpmaster School.

Gerardo resides in Triangle, Virginia with his wife Jaime and is a member of The American Legion George Washington Post 1 in Washington DC.