

**NATIONAL ASSOCIATION OF STATE DIRECTORS
OF VETERANS AFFAIRS**



House Committee on Veterans' Affairs

Subcommittee on Disability Assistance and Memorial Affairs

Hearing

July 25, 2017

Presented by

Mr. Martin "Marty" Caraway

Associate Member, National Association of State Directors of Veterans Affairs

1st VP, National Association of County Veterans Service Officers

Mr. Chairman and distinguished members of the committee, my name is Martin Caraway. I am an Associate Member of the National Association of State Directors of Veterans Affairs (NASDVA) and I am here at the request of and on behalf of NASDVA President, Randy Reeves and NASDVA's Executive Committee. I currently serve as the Redwood County Veteran Service Officer in southwestern Minnesota and am also honored to serve as the 1st Vice President of the National Association of County Veteran Service Officers. The strong relationships and partnerships we, as County Veteran Service Officers, have with our individual State Directors across the Nation is a force multiplier and enabler for service and care to our Veterans. Here with me today is Colonel (retired) Thomas Palladino, Executive Director, Texas Veterans Commission and NASDVA Southwest District Vice President.

State, County and National Veteran Service Officers assist Veterans every day who suffer from Post-Traumatic Stress Disorder (PTSD). We not only see their needs and the difficulties they may encounter with daily life, we also see the frustration and confusion they sometimes feel in dealing with the VA claims process. I sincerely hope the "ground level" perspective I present will be helpful in improving the process for our Veterans.

Specifically:

1. VA's accuracy in processing PTSD claims (including those with an exception to the requirement of a verified stressor).

It is our general observation that VA employees (VSR/RVSR) are, for the most part, doing a good job in handling the complex claims of service connection for PTSD. However, there are parts of the process that require review (and correction). For example, 38 CFR 3.304 (f)(3) states "... *If a stressor claimed by a veteran is related to the veteran's fear of hostile military or terrorist activity and 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 diagnosis of post-traumatic stress disorder and that the veteran's symptoms are related to the claimed stressor, in the absence of clear and convincing evidence to the contrary, and provided the claimed stressor is consistent with the places, types, and circumstances of the veteran's service, the veteran's lay testimony alone may establish the occurrence of the claimed in-service stressor.....*". Even though the guidance appears to be clear, in these cases VA is still sending a VA Form 21-0781 Statement in Support of Claim for Service Connection for post-traumatic stress disorder. The employees are following the M21 4.ii.d, *Claims for Service Connection for Post-Traumatic Stress Disorder*, which states "...*service connection (SC) for posttraumatic stress disorder (PTSD) associated with an in-service stressor requires credible supporting evidence that the claimed in-service stressor actually occurred.....*" Given that information, the VA VSR's and RVSR's are adequately performing their jobs per VA guidance. The M21 is requiring the credible supporting evidence, i.e. the VA Form 21-0781. When this process takes place it is considered further development and the veteran's case is removed from the Fully Developed Claim process, and then placing more burden of proof on the veteran. We

have heard from VA staff that if a 21-0781 is not received, they will not grant service connection for the claim, despite 38 CFR guidance. Failure(s), like this, to follow prescribed guidance and apparent disparities between law and VA guidance must be addressed and steps must be taken to ensure the process is consistent for all our Veterans.

We further observe that the Department of Veterans Affairs (VA) does not distinguish between drill-down for numbers on individual conditions like PTSD. A “best practice” example can be seen in Texas, where the VA Regional Offices are working with the Texas Veterans Commission (TVC) Strike Force Teams to ensure a VA Form 21-0781 (Statement in Support of Claim for Service Connection for PTSD) is completed for the PTSD stressor or the combat related stressors are verified on the DD 214s (Purple Heart or Meals w/ V Device, etc.).

2. Efficacy of DBQs used to evaluate PTSD claims (ability of DBQs to produce intended result).

The VA does not use DBQs on initial examinations for PTSD. They can however, use them on claims for increases or routine future examinations. In many instances, VA physicians refuse to fill out DBQ’s because they believe it is a “conflict of interest”. The veteran, of course, can take the DBQ to a private physician if they wish, but feedback from many veterans is that the cost is exorbitant. Sadly, based on individual veterans’ financial situations, “exorbitant” or cost-prohibitive can be reality, therefore disadvantaging some veterans based on their ability to pay.

DBQ’s are designed to streamline the examination process, allowing examiners to ask pointed questions that specifically address symptomology and severity of those symptoms. Without question, a claim for service connection for PTSD is complex. VA is attempting to draw out what the individual veteran fights daily to suppress. Examiners, more specifically those whom are contracted and not employed by VA, seem to have a tendency to “skim” through the DBQ form. There are many potential reasons for this, but it appears it is to see as many patients as possible throughout the day. Reports back from veterans are eerily similar, in that the exams start later than the scheduled time (most likely because the examiner is reviewing the claims folder) and conclude well before the scheduled appointment is scheduled to end (most likely to complete the dictation of DBQ). Most PTSD appointments are scheduled for one hour, with (generally) a mere 15 minutes of face to face time between the veteran and provider. The pressure of trying to accurately gauge the effect of PTSD on someone’s life in that short time (15 minutes) is not in the veteran’s best interest nor frankly in the best interest of VA and the integrity of the system. Veterans tend to walk away feeling like they had little or no opportunity to really discuss how their life is impacted. Reading hundreds (even thousands) of these examinations, they all read very similar; examiners are capturing one or two quotes from the veteran and inserting them into the dictations to present a (seemingly) thorough examination that is then used to rate the case.

VA and VA contracted providers are given DSM V DBQ's to complete for PTSD claims. Private mental health providers are restricted to only filing out DSM IV DBQ's if the veteran wanted or needed to appeal the initial decision, based on a poor or incomplete examination. This inconsistency often questions the integrity of the private examination. To expand: VA examiners are taking the aforementioned time (1 hour total) to review the veteran's claim file, where in contrast the private examiner may have spent multiple sessions with the veteran and often has intimate knowledge of the impact of the diagnosis on the veteran's life. If the veteran goes through a FOIA request for a copy of their claims file for the private examiner to review, they run a significant risk of missing critical deadlines due to VA's untimely turnaround time on FOIA requests. If the private evaluation does not cite the claims file, the VA RVSR's and DRO's give relative equipoise to the internal examiner solely based on review of the C-file.

3. VA's quality review measures.

There is a six-page Rating Veterans Service Representative (RVSR) quality checklist that is followed for quality review measures. Two key points on the checklist are: error description on exams; and medical opinions. One of the most common disability claims is PTSD. Due to the large number of claims, that allows for a larger number of errors in quality.

Examples of errors in quality:

- Insufficient examination dealing with the issue of nexus.
- Effective date assigned.
- All needed evidence not on record when the exam was ordered.

For the last couple of years, since the VA has allowed for internal Quality Review Teams (QRT), we are finding QRT personnel utilizing the rating builder's disclaimer, "*The mental calculator produces a suggestion only, based on the data entered. However, this suggestion is not meant to replace the judgement of the decision maker and a review and weighing of the evidence is required.*" This vividly highlights the subjectivity individual raters and, in these cases, the veterans' representative/VSO is usually told to appeal the case instead of VA correcting the decision at the local level. This is counterproductive, adds to the time the veteran waits for a decision and, functionally, shifts the workload from claims to appeals; this is inefficient if the aim is to decide/solve cases at the lowest possible level.

Since VA is now relying heavily upon contracted C&P examiners we believe there should be more oversight on these contractors. To illustrate this point: extensive review of multiple DBQ's, from multiple examiners (and on different veterans), look like the (multiple) DBQ's completed on that these veterans were the exact same person, written by the same provider. It is alarming when we see these "boiler-plate" DBQ's completed so similarly and yet face time with the veteran is continuously shortened by the examiners. This needs critical review.

4. Guidance and Training for VSRs and RVSRs to identify PTSD examination results.

The VA provides compensation templates to assist raters in evaluations. Upon review of claims, it has been discovered that the templates are not being utilized. It appears underutilization of this tool may be the leading cause of errors in quality. We believe it can be argued that if these templates were used during evaluation of PTSD examination results and in preparation of rating decisions, the number of decisions in favor of veterans would increase.

We contend it should be standard practice for VA employees to resolve in favor of the veteran in cases of conflict; especially when “higher level” guidance (i.e. 38 CFR) exists. Specifically, VA’s directive(s) outlined in the M21 Manual seem to directly contradict the proper application of the legal provision(s) of 38 CFR as it relates to utilizing exception to the requirement of a verified stressor. VA should not negatively scrutinize VSR’s and RVSR’s who resolve doubt in favor of the veteran by carrying out 38 CFR 3.304(f) in lieu of following the M-21 Manual and subsequently issuing the VA Form 21-0781, which may or may not come back as a verifiable stressor by citing 38 CFR 3.102-Reasonable Doubt.

Mr. Chairman and distinguished Members of the House Subcommittee on Disability, Assistance and Memorial Affairs, NASDVA and its partners deeply respect and appreciate the important work you are doing to ensure America’s Veterans receive the service, are and compensation they have earned. Working together, with VA and all stakeholders, we can make this process better.

Thank you for including NASDVA in this very important hearing.