



California Association of County Veterans Service Officers, Inc.
Serving Those Who Served

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PTSD & MST – Understanding How These Claims *Should* Be Adjudicated

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Service Connection In General

To establish a right to compensation for a present disability, a veteran must show:

1. The existence of a present disability;
2. In-service incurrence or aggravation of a disease or injury; and
3. A causal relationship between the present disability and the disease or injury incurred or aggravated during service

Shedden v. Principi, 381 F. 3d 1163, 1167 (Fed. Cir. 2004)

Service Connection For PTSD

Set forth in 38 C.F.R. § 3.304(f):

1. Medical evidence of a current diagnosis of PTSD;
2. **Credible supporting evidence** that the **in-service stressor** occurred; and
3. A link, established by medical evidence, between the current symptoms and the in-service stressor.

What's the Difference?

- Under the general rules of service connection, a veteran's lay testimony alone **may suffice** to establish service connection.
- Under the general rules of service connection for PTSD, a veteran's lay testimony alone is **not enough** to establish service connection.
- The most common reason we see from VA adjudicators in denying PTSD claims is to allege that the veteran failed to corroborate stressor events as required by 38 C.F.R. § 3.304(f).

PTSD Stressor Basics

- Combat experience may provide the stressor that leads to PTSD, but the stressor does not have to occur in combat.
- PTSD could be caused by experiencing or witnessing a sexual assault, physical attack, torture, automobile accident, plane crash, ship sinking, explosion, or natural disasters, being held as a prisoner-of-war, being detained in a concentration camp, working in a grave registration unit or a burn care unit, or witnessing a dead body or body parts.
- It could also come from “actual or threatened death or serious injury, or a threat to the physical integrity of the Veteran or **others**.”
- The stressor could be experienced alone or with a group of people.
- Veterans may experience exposure to stressors through direct exposure or by **witnessing them**.
- A PTSD stressor can come through **indirect exposure**, such as a traumatic incident in a veteran’s **personal life** (e.g., loss of a loved one or learning that a loved one was exposed to trauma).
- PTSD may first appear many years after service or symptoms of PTSD may appear immediately, but not be diagnosed as part of PTSD until much later.
- If a Veteran is sound on enlistment and develops **delayed or late-onset PTSD** in service related to a pre-service stressor, the claim may be granted under 38 U.S.C. 1110, which contains the general criteria for establishing SC for a chronic disability. ***M-21 VIII.iv.1.D.1.e***

What is Credible Supporting Evidence of an In-Service Stressor?

- **Credible supporting evidence:** The Veterans Court and Federal Circuit have clarified that this requirement imposes a **burden on Veteran** to demonstrate that the claimed stressor occurred; i.e., Veteran must put forth sufficient evidence to show that “**it was at least as likely as not**” that event occurred to the Veteran.
- *See Holton v. Shinseki*, 557 F.3d 1362, 1370 (2009)

What is Credible Supporting Evidence of an In-Service Stressor?

- Generally, a veteran's **testimony alone does not qualify** as "credible supporting evidence" of the occurrence of an in-service stressor.
- **After-the-fact** psychiatric analyses which infer a traumatic event are likewise **insufficient** in this regard.
- VA often denies PTSD claims because in their view there is not enough credible supporting evidence of an in-service stressor.
- But they frequently demand more evidence of stressor corroboration than is legally required.
- For example, they often **disregard buddy or lay statements** supporting the veteran's account of what happened in service or noting the veteran's condition shortly after the incident. This is **legal error**.
- The Veterans Court made this clear: "The VA **cannot reject supportive lay evidence** without giving reasons or bases for its rejection." *Dizoglio v. Brown*, 9 Vet. App. 163 (1996)

What is Credible Supporting Evidence of an In-Service Stressor?

More case law re: credible supporting evidence:

- “There is no need for the **service records** to corroborate ‘every detail including the veteran’s personal participation’ in the stressful event.” *Suozzi v. Brown*, 10 Vet. App. 307 (1997)
- “As long as there is **independent evidence** of the occurrence of a stressful event, and the **evidence implies** his personal exposure then the requirement in 38 C.F.R. § 3.304(f) that there be credible supporting evidence that the claimed in-service stressor occurred **is satisfied**” *Pentecost v. Principi*, 16 Vet. App. 128 (2002)
- “The evidence corroborating the stressor **does not have to be found in military service records**. The credible evidence can come from **any source**.” *Cohen v. Brown*, 10 Vet. App. 128 (1997)
- “A determination of whether there is credible supporting evidence to corroborate the occurrence of a stressor **must be consistent with the benefit of the doubt** equipoise standard.” *Sizemore v. Principi*, 18 Vet. App. 264 (2004).
- “While the documentation of a life-threatening stressor ... certainly supports a PTSD diagnosis, such a stressor **is not a required** element for a PTSD diagnosis.” *Duran v. Brown*, 7 Vet. App. 216, (1994).

What is Credible Supporting Evidence of an In-Service Stressor?

- A statement from the veteran's psychiatrist confirming that the veteran's account of what happened is credible and relating it to the current diagnosis of PTSD **doesn't in itself** fulfill the requirement of credible supporting evidence.
- But... a psychiatrist's report may contain information such as a detailed description of the stressor or a description of the veteran's change in behavior subsequent to the stressor that **can help to corroborate** that the claimed stressor actually occurred or can help lead to other corroborative evidence.
- The Veteran's Court stated: "We believe that a determination as to whether a stressor occurred is a factual question that **must be resolved by VA adjudicators. Nonetheless**, an opinion from an appropriate medical or mental health professional could be helpful in making that determination. **Such an opinion could corroborate the claimant's account of the stressor incident.** In certain cases, the opinion of such a professional could help interpret the evidence so that VA decisionmaker can better understand it. Opinions given by such professionals are not binding upon VA, but instead are **weighed along with all the evidence provided.**" *Patton v. West*, 12 Vet. App. 272 (1999).

Credible Supporting Evidence Per the M-21 Manual

VIII.iv.1.D.2.g. Identifying Credible Supporting Evidence of a Stressor When Lay Testimony Is Not Sufficient

Credible supporting evidence of this type of stressor **may include**

- service treatment records (STRs) or service personnel records
- private medical records
- **lay statements**
- police or insurance reports, or
- newspaper accounts of the traumatic event.

VIII.iv.1.D.2.h. Reviewing Evidence for Corroboration of a Stressor

When corroborating evidence of a stressor is required, **there is no requirement that the evidence must, and may only, be found in official documentary records.** In most cases, however, official documentary records are the most reliable source of stressor verification. If these sources do not contain the necessary information, **review other sources of evidence carefully and critically** for their adequacy and reliability.

Credible Supporting Evidence Per the M-21 Manual

VIII.iv.1.D.2.f. Requirement for Credible Supporting Evidence of a Stressor

The requirement for credible supporting evidence of a stressor means that there must be some **believable evidence** that tends to support the Veteran's assertion. In determining whether evidence is credible, consider its

- plausibility
- consistency with other evidence in the case, and
- source.

VIII.iv.1.A.1.g. Accepting Buddy Statements of a Fellow Veteran as Corroboration of a Claimed In-Service Stressor

Accept a buddy statement from a fellow Veteran as corroboration of a claimed in-service stressor if the statement is consistent with the time, place, and circumstances of the service of both the Veteran and the fellow Veteran making the buddy statement.

Credible Supporting Evidence Per the M-21 Manual

VIII.iv.1.D.2.j. Denying a PTSD Claim Because of an Uncorroborated Stressor

When corroborating evidence of a stressor is required because the stressor may not be established by lay evidence alone **and credible supporting evidence from other sources is not of record**, a denial solely because of an unconfirmed stressor is improper *unless*

- the Military Records Research Center (MRRC) has confirmed there is no corroborating evidence of a claimed stressor, or
 - the Veteran has failed to provide the basic information required to conduct research.
-
- VA virtually always denies PTSD claims when they get a negative response from MRRC regardless of whether there is other probative evidence in the file. This is contrary to law and contrary to their own guidance!
 - BLUF, corroborating a stressor without official records can be difficult but **don't let VA tell you it can't be done...**

The Exceptions

SOMETIMES CORROBORATING A STRESSOR IS MUCH EASIER...

There are five categories with liberalizing provisions to establish a claimed in-service stressor:

1. In-service PTSD Diagnosis - 38 C.F.R. § 3.304(f)(1):
2. Combat related - 38 C.F.R. § 3.304(f)(2):
3. Fear of Hostile Military or Terrorist Activity - 38 C.F.R. § 3.304(f)(3):
4. Former POW - 38 C.F.R. § 3.304(f)(4):
5. Personal Assault / MST related - 38 C.F.R. § 3.304(f)(5):

In Service PTSD Diagnosis

38 C.F.R. § 3.304(f)(1):

- If the evidence establishes a **diagnosis of PTSD 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 as long as "clear and convincing evidence to the contrary" is absent.
- This relaxed standard **does not apply** if a mental disorder other than PTSD is diagnosed in service.

Combat Veteran PTSD

38 C.F.R. § 3.304(f)(2):

- If the evidence establishes that the veteran **engaged in combat** with the enemy and the claimed stressor is **related to that combat**, 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.

Combat Veteran PTSD

M-21 VIII.iv.1.A.3.e.:

Engaging in combat with the enemy means personal participation in events constituting an actual fight or encounter with a military foe or hostile unit or instrumentality. It includes presence during such events either as a

- combatant, or
- service member performing duty in support of combatants, such as providing medical care to the wounded.

Establishing Combat Service

- VA is **not required** to accept the veteran's statement that he or she served in combat.
- A showing of no more than service in a general 'combat area' or 'combat zone' is **not sufficient** to trigger the evidentiary benefit of § 1154(b). *Moran v. Peake*, 525 F. 3d at 1158 (2008).
- The **veteran's statement** is, however, **required to be weighed and considered** when the VA determines whether a veteran engaged in combat.
- VA cannot conclude the veteran did not engage in combat simply because a veteran did not have a MOS, award, or decoration indicating combat. *Dizoglio v. Brown*, 9 Vet. App. 163 (1996).
- The Veterans Court has ruled that the VA **cannot impose a requirement that there must be corroboration of a veteran's statements as to his combat service** because there is "no statutory or regulatory basis" for such a requirement. *Moran v. Principi*, 17 Vet. App. 154 (2003).
- However, corroborating evidence can help persuade the VA to accept a veteran's statement that he or she was in combat.

Ways to Corroborate Combat Service

- Service Records
 - Military Decorations*
 - Hazardous Duty Pay
 - Buddy Statements
 - Evidence that base was attacked by enemy
 - Newspapers or regimental or divisional newsletters that detail specific combat actions and name the veteran's unit as a participant
 - News organizations maintain extensive photo libraries
 - Photographs showing the veteran's comrades who were killed in action
-
- VA cannot conclude the veteran did not engage in combat simply because a veteran did not have a MOS, award, or decoration indicating combat. **It must consider all evidence.**
 - Remember, VA is required **resolve every reasonable doubt in favor of the veteran.**

*See M-21 VIII.iv.1.A.3.h for a list of individual decorations as evidence of combat participation.

Fear of Hostile Military or Terrorist Activity

38 C.F.R. § 3.304(f)(3):

- Since July 13, 2010, standards have been relaxed re: establishing in-service stressor for **some non**-combat veterans
- Veteran's lay statement alone may establish in-service stressor. How it's supposed to work...

Fear of Hostile Military or Terrorist Activity

- If Veteran's lay statement is re: "fear of hostile military or terrorist activity" **AND**
- A **VA psychiatrist or psychologist** confirms the diagnosis of PTSD, **AND**
- Confirms the stressor is adequate to support a diagnosis, **AND**
- Confirms the symptoms are related to the stressor, **THEN**
- As long as the stressor is consistent with the veteran's service, related to "places, types, and circumstances of veteran's military service where **risks or danger from such activity are most likely to exist**" **AND** and as long as there is no clear and convincing evidence to the contrary, the veteran's **lay testimony alone** should establish the stressor.
- **IMPORTANT:** The alleged stressor must have occurred in an area of potential hostile military or terrorist activity.

Fear of Hostile Military or Terrorist Activity

M-21 VIII.iv.1.A.3.k.:

- The receipt of military awards such as, but not limited to, the Vietnam Service or Campaign Medal, Kuwait Liberation Medal, Iraq Campaign Medal, and Afghanistan Campaign Medal is **generally considered evidence** of service in an area of potential hostile military or terrorist activity.
- The receipt of military awards such as the National Defense Service Medal, Armed Forces Service Medal, and Global War on Terrorism (GWOT) Service Medal **generally does not indicate service** in locations that involve exposure to hostile military or terrorist activity **because these are general medals** that do not denote service in a particular area or campaign. If the Veteran served in an area of potential hostile military or terrorist activity, they likely would have received a more specific medal for such service.
- The fear-based stressor criteria are not met based on
 - *Anticipation* of future deployment to a location of hostile military or terrorist activity, or
 - *Learning* of the death of another person, when such death occurred remote from the Veteran in a location of hostile military or terrorist activity.

PTSD – 38 C.F.R. § 3.304(f)(3)

- “fear of hostile military or terrorist activity” means that a veteran experienced, witnessed, or was confronted with an event or circumstance that involved actual or threatened death or serious injury, or a threat to the physical integrity of the veteran or others, such as from an actual or potential improvised explosive device; vehicle-imbedded explosive device; incoming artillery, rocket, or mortar fire; grenade; small arms fire, including suspected sniper fire; or attack upon friendly military aircraft, and the veteran's response to the event or circumstance involved a psychological or psycho-physiological state of fear, helplessness, or horror.

PTSD – 38 C.F.R. § 3.304(f)(3)

In other words:

- If Veteran submits lay statement re: “fear of hostile military or terrorist activity” and **VA psychiatrist or psychologist** agrees that it’s consistent with places, times, and circumstances of veteran’s military service **AND** current PTSD diagnosis
- Then VA is to schedule VAX
- § 3.304(f)(3) **does not require verification** of stressor

PTSD – 38 C.F.R. § 3.304(f)(3)

This box MUST be checked on the PTSD DBQ:

Describe one or more specific stressor event (s) the Veteran considers traumatic(may be pre-military, military, or post-military):

a. Stressor #1: _____

Does this stressor meet Criterion A (i.e., is it adequate to support the diagnosis of PTSD)?

☐ Yes ☐ No

Is the stressor related to the Veteran's fear of hostile military or terrorist activity?

☒ Yes ☐ No

If no, explain: _____

Is the stressor related to in-service personal assault, e.g. military sexual trauma?

___Yes ___no

If yes, please describe the markers that may substantiate the stressor.

- NOTES: This section is NOT on the public DBQ, only the internal version. That's because a non-VA health care provider's opinion has NO weight in the regulation.
- However, a statement from a non-VA practitioner should trigger VA's **duty to assist** to schedule a C&P exam.
- Drone Aircraft crew members may also qualify for 38 C.F.R. § 3.304(f)(3)

PTSD Due to Personal Assault/Trauma/MST

- In-service personal assault or personal trauma is “harm perpetrated by a person who is not considered part of an enemy force.”
- Examples of personal trauma include “assault, battery, robbery, mugging, stalking, and harassment.
- **Military sexual trauma (MST)** is a subset of personal trauma defined as “psychological trauma, which ... resulted from a physical assault of a sexual nature, battery of a sexual nature, or sexual harassment which occurred while the veteran was serving on active duty, active duty for training, or inactive duty training.”
- Sexual harassment is defined as “repeated, unsolicited verbal or physical contact of a sexual nature which is threatening in character.”
- MST is **not** a condition or diagnosis, it is a traumatic event that may or may not lead to a condition or diagnosis.
- As such, a veteran will not be compensated upon showing only that he or she experienced military sexual trauma. The veteran must still show that he or she has a condition— such as PTSD, anxiety, or depression.

PTSD Due to Personal Assault/Trauma/MST

38 C.F.R. § 3.304(f)(4):

If the evidence establishes that the veteran was a **prisoner-of-war** under the provisions of § 3.1(y) of this part and the **claimed stressor is related** to that prisoner-of-war experience, 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.

PTSD Due to Military Sexual Trauma

- Most common reason PTSD/MST claim is denied? “No evidence of claimed in-service stressor in military records.”
- This is **LEGAL ERROR**, contrary to case law, AND VBA Training Letter!

PTSD Due to Military Sexual Trauma

- CVSO ammo: VBA Training Letter 11-05, “Adjudicating PTSD Claims Based on MST” (12/2/2011)
- Link to Training Letter (read it please!):
<https://acrobat.adobe.com/link/review?uri=urn:aa:scds:US:7cd28506-28c4-3f19-aa2c-1b0326b2a222>

PTSD Due to Military Sexual Trauma

From VBA Training Letter:

- “Markers will be accepted as sufficient evidence to proceed with VA exam and claim adjudication because MST victims often do not directly **report or document** the stressor at the time it occurs. Thus, **evidence must be sought that is indirect, secondary, or circumstantial in nature.**” (p2)

PTSD Due to Military Sexual Trauma

38 CFR 3.304(f)(5):

- If a posttraumatic stress disorder claim is based on in-service personal assault, evidence from **sources other than the veteran's service records** may corroborate the veteran's account of the stressor incident.
- Examples of such evidence include, but are not limited to: records from law enforcement authorities, rape crisis centers, mental health counseling centers, hospitals, or physicians; pregnancy tests or tests for sexually transmitted diseases; and statements from family members, roommates, fellow service members, or clergy.
- Evidence of **behavior changes** following the claimed assault is one type of relevant evidence that may be found in these sources.

PTSD Due to Military Sexual Trauma

38 CFR 3.304(f)(5) continued:

- Examples of **behavior changes** that may constitute credible evidence of the stressor include but are not limited to: a request for a transfer to another military duty assignment; deterioration in work performance; substance abuse; episodes of depression, panic attacks, or anxiety without an identifiable cause; or unexplained economic or social behavior changes.
- VA **will not deny** a posttraumatic stress disorder claim that is based on in-service personal assault without first advising the claimant that evidence from sources other than the veteran's service records or evidence of behavior changes **may constitute credible supporting evidence** of the stressor and allowing him or her the opportunity to furnish this type of evidence or advise VA of potential sources of such evidence.
- VA may submit any evidence that it receives to an appropriate medical or mental health professional for an opinion as to whether it indicates that a personal assault occurred.

PTSD Due to Military Sexual Trauma

- **M21VIII.iv.1.E.1.d.** lists additional examples of markers: increased use or abuse of leave without an apparent reason, such as family obligations or family illness; episodes of depression, panic attacks, or anxiety without identifiable reasons; visits to a medical or counseling clinic or dispensary without a specific diagnosis or specific ailment use of, or increased interest in; pregnancy tests or tests for sexually-transmitted diseases (including the human immunodeficiency virus (HIV)) around the time of the incident; sudden requests that the Veteran's military occupational series or duty assignment be changed without other justification; changes in performance and performance evaluations; increased or decreased use of prescription medications; increased use of over-the-counter medications; alcohol or drug abuse; increased disregard for military or civilian authority; obsessive behavior such as overeating or undereating; unexplained economic or social behavior changes; treatment for physical injuries around the time of the claimed trauma, but not reported as a result of the trauma; and/or the breakup of a primary relationship.
- Behavioral change evidence may include **lay statements** or documentary evidence.
- Evidence of behavioral changes typically needs **interpretation by a clinician** in personal trauma claims.

PTSD Due to Military Sexual Trauma

Key case law:

- AZ v. Shinseki (Fed. Cir. 2013): CAFC held that “the absence of service records documenting the alleged assault **is not pertinent evidence** that the assault did not occur” and
- “VA may not treat a claimant’s **failure to report** an alleged sexual assault to military authorities as pertinent evidence that it did not occur.”

AZ v. Shinseki, 731 F. 3d 1303 (2013)

PTSD Due to Military Sexual Trauma

Key case law:

- In *Molitor v. Shinseki*, the Court held that where “a claimant pursuing service connection for PTSD based on an in-service personal assault adequately identifies relevant records of **fellow servicemembers** that may aid in corroborating the claimed assault ... VA must either **attempt to obtain such records** or notify the claimant why it will not undertake such efforts.”

Molitor v. Shinseki, 28 Vet. App. 397, 410 (2017)

PTSD Due to Military Sexual Trauma

- A major difference between PTSD claims based on personal assault or personal trauma and PTSD claims based on other stressors is that in the former, **after-the-fact medical opinions** can corroborate the claimed stressor and **must be considered by the VA** in determining whether the evidence establishes that the in-service stressor actually occurred.
- The Federal Circuit in *Menegassi v. Shinseki*, expressly held that, in PTSD cases where the alleged in-service stressor is a sexual assault, **medical opinion evidence may be submitted for use in determining whether occurrence of the stressor is corroborated**.
- However, this does not mean that the VA must accept a medical examiner's opinion as credible evidence of the claimed in-service stressor.
- Instead, the VA **must weigh the medical examiner's opinion** against other evidence of the record and determine whether it corroborates the claimed in-service stressor.

PTSD Due to Military Sexual Trauma

Key case law:

Menegassi v. Shinseki

- “We hold that under 38 C.F.R. § 3.304(f)(5), **medical opinion evidence may be submitted** for use in determining whether the occurrence of a stressor is corroborated. Section 3.304(f)(5) allows a veteran claiming PTSD from an in-service military assault to submit evidence other than in-service medical records to corroborate the occurrence of a stressor.
- “The regulation specifically designates—and the DVA's interpretation contemplates—that medical opinion evidence may be submitted.”
- Therefore, the **Veterans Court erred** when it determined that a medical opinion based on a post service examination of a veteran cannot be used to establish the occurrence of a stressor.”

Menegassi v. Shinseki, 638 F.3d 1379, 1382 (2011)

PTSD Due to Military Sexual Trauma

Key case law:

- Patton v. West (1999): CAVC held that a qualified **examiner's opinion** can be considered credible supporting evidence for occurrence of MST stressor
- Not so for "routine" PTSD claims
- VA adjudicators often get this wrong!

Patton v. West, 12 Vet. App. 272 (1999)

Other Mental Health Conditions

Key Case Law:

- A service-connection claim for a mental condition must “be considered a claim for **any mental disability** that may reasonably be encompassed by several factors including:
 - Description of the claim;
 - Description of symptoms;
 - Info submitted by claimant or obtained by VA in support of the claim.”

Clemons v. Shinseki, 23 Vet.App. 1, 5 (2009)

NOTE: The regulations establishing the occurrence of a personal assault/MST event in service **based only on a marker** or fear of hostile military or terrorist activity, do not apply to any other mental health condition other than PTSD. **Non-PTSD conditions require actual documentation of an in-service event.**

Final Thoughts

- VA frequently demands more evidence of stressor corroboration than is legally required. Utilize the regulations, case law, and VA's own guidance to push back.
- Sometimes mental health conditions can be more easily service connected secondarily with a medical opinion (e.g., pain, lifestyle changes, etc.). Don't chase a stressor you don't need!

QUESTIONS?

LIVE
Q&A

More Questions?

Feel free to contact us about questions from this training or **ANYTIME** you have a question about a claim:

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