

5/31/09

A DISPARATE IMPACT ON FEMALE VETERANS: THE UNINTENDED CONSEQUENCES OF VA REGULATIONS GOVERNING THE BURDENS OF PROOF FOR POST-TRAUMATIC STRESS DISORDER DUE TO COMBAT AND MILITARY SEXUAL TRAUMA.

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The mission of the United States Department of Veterans Affairs (VA) is to honor and serve veterans by providing them with long term access to quality healthcare and disability benefits.² The process is meant to be non-adversarial and the benefit of the doubt is always resolved in the veteran's favor.³ However, there are many veterans who find the process of filing for and obtaining VA disability benefits to be too complicated, long and daunting. In a word, retired Navy Captain Lory Manning of The Women's Research & Education Institute (WREI) has described the process as "adversarial" to veterans.⁴ A closer look at VA regulations suggests that Capt. Manning's characterization is correct, especially with regard to female veterans.

This article will address two VA regulations that create an arduous evidentiary burden that female veterans must meet in order to qualify for disability compensation benefits; a notably more difficult burden of proof than their male counterparts. Specifically, this article will address VA regulations governing

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² U.S. Dept. of Vet. Affairs website, available at http://www.va.gov/about_va/.

³ 38 U.S.C. § 5107(b) (effective November 9, 2000); *Walters v. Nat'l Ass'n of Radiation Survivors et. al.*, 473 U.S. 305, 309 (1985); *Gilbert v. Derwinski*, 1 Vet. App. 49, 55 (1990)

⁴ Interview with Capt. Lory Manning, Director of Women in the Military Project, The Women's Research and Education Institute (November 13, 2008).

service connection for post-traumatic stress disorder (PTSD) resulting from 1) combat exposure and 2) military sexual trauma (MST).

I. **ESTABLISHING SERVICE CONNECTION FOR PTSD**

Law

Generally, for the purpose of receiving disability benefits, a service connection classification, may be granted for disability resulting from disease or injury incurred in or aggravated by active military duty.⁵ Service connection may also be granted for any disease diagnosed after discharge when all the evidence, including that pertinent to service, establishes that the disease was incurred in service.⁶

Establishment of service connection for PTSD requires: (1) medical evidence diagnosing PTSD; (2) credible supporting evidence that the claimed in-service stressor actually occurred; and (3) medical evidence of a link between current symptoms and the claimed in-service stressor.⁷

A diagnosis of PTSD must be established in accordance with 38 C.F.R. § 4.125(a), which mandates that all mental disorder diagnoses must conform to the American Psychiatric Association's Diagnostic and Statistical Manual for Mental Disorders (DSM-IV).⁸ The United States Court of Appeals for Veterans Claims (Court) has taken judicial notice of the mental health profession's adoption of the DSM-IV to establish a diagnosis of PTSD. The Court acknowledged the change from an objective "would evoke . . . in almost anyone" standard in assessing whether a stressor is sufficient to trigger PTSD to a subjective standard (e.g., whether a

⁵ 38 U.S.C. §§ 1110, 1131 (2008).

⁶ 38 C.F.R. § 3.303(d) (2008).

⁷ 38 C.F.R. § 3.304(f) (2008); *Cohen v. Brown*, 10 Vet. App. 128 (1997).

⁸ 38 C.F.R. § 3.304(f).

person's exposure to a traumatic event and response involved intense fear, helplessness, or horror).⁹ Thus, as noted by the Court, a more susceptible person could have PTSD under the DSM-IV criteria given his or her exposure to a traumatic event that would not necessarily have the same effect on "almost everyone."¹⁰

Procedure

In order to initiate a claim for entitlement to service connection, the veteran, or his or her representative, must file a claim with a state VA Regional Office (RO) for initial adjudication.¹¹ If the claim for service connection is denied, the veteran may then appeal the claim to the Board of Veterans' Appeals (Board) for readjudication.¹² The Board serves as the fact finder in each case before it and must; therefore, review the entire claims file including the veteran's complete service and medical history in order to determine whether he or she has met the criteria to establish a claim for service connection.¹³

Although in theory every veteran has the same burden of proof to establish entitlement to service connection,¹⁴ in reality the circumstances of combat and military sexual trauma make these types of claims more difficult for female veterans to prove.

⁹ *Cohen*, 10 Vet. App. 140-141.

¹⁰ *Id.*

¹¹ *See* 38 USCS §§ 5100-5104.

¹² *See* 38 USCS § 7104.

¹³ *Id.*

¹⁴ *Gilbert v. Derwinski*, 1 Vet. App. 49 (1990). (VA is responsible for determining whether the evidence supports the claim or is in relative equipoise, with the veteran prevailing in either event, or whether a preponderance of the evidence is against the claim, in which case the claim is denied.)

II. SERVICE CONNECTION FOR PTSD DUE TO COMBAT

The first VA regulation that imposes a difficult evidentiary standard on female veterans is the regulation governing service connection for combat-related PTSD diagnosed post-service.

Generally, establishing service connection for combat-related PTSD differs slightly from the requirements for establishing service connection for non-combat PTSD as described above. In this regard, if the evidence presented 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.¹⁵ Therefore, corroborating evidence need not be used to prove the veteran's contentions.

The ordinary meaning of the phrase "engaged in combat with the enemy," as used in 38 U.S.C. § 1154(b), requires that a veteran have participated in events constituting an actual fight or encounter with a military foe or hostile unit or instrumentality. The issue of whether any particular set of circumstances constitutes engagement in combat with the enemy for purposes of section 1154(b) must be resolved on a case-by-case basis.¹⁶

If there is no combat experience, or if there is a determination that the veteran engaged in combat but the claimed stressor is not related to such combat, there must be independent evidence to corroborate the veteran's statement as to the

¹⁵ 38 U.S.C. § 1154(b); 38 C.F.R. § 3.304(f)(1) (emphasis added).

¹⁶ DVA Op. Gen. Counsel Prec. 12-99 (Oct. 18, 1999).

occurrence of the claimed stressor.¹⁷ The veteran's testimony, by itself, cannot, as a matter of law, establish the occurrence of a non-combat stressor and corroborating evidence must be obtained to prove the combat stressor.¹⁸ Moreover, a medical opinion diagnosing PTSD does not suffice to verify the occurrence of the claimed in-service stressors.¹⁹

However, the fact that a veteran, who despite having noncombatant military occupational specialty, was stationed with a unit that was present while enemy attacks occurred would strongly suggest that he or she was, in fact, exposed to such attacks.²⁰ In other words, the veteran's presence with the unit at the time verified attacks occurred corroborates his or her statement that he or she experienced such attacks personally. A stressor need not be corroborated in every detail.²¹

It is important to recognize that due to the nature and circumstances of combat, documentation which might support the presence of a combat stressor can be difficult to obtain. Congress has acknowledged this fact by accepting a veteran's lay testimony without corroboration in order to prove a combat stressor where there is evidence of combat in service.²²

Documentation can be especially difficult to obtain with regard to females engaging in land combat action, as was seen in Operation Iraqi Freedom (OIF) and

¹⁷ *Doran v. Brown*, 6 Vet. App. 283, 288-89 (1994).

¹⁸ *Dizoglio v. Brown*, 9 Vet. App. 163, 166 (1996).

¹⁹ *Cohen*, 10 Vet. App. 142; *Moreau v. Brown*, 9 Vet. App. 389, 395-396 (1996).

²⁰ *Pentecost v. Principi*, 16 Vet. App. 124 (2002).

²¹ *Suozzi v. Brown*, 10 Vet. App. 307, 311 (1997).

²² U.S.C. § 1154(b); 38 C.F.R. § 3.304(f)(1); Post-Traumatic Stress Disorder: Hearings Before the House Committee on Veterans Affairs, Subcommittee on Disability Assistance and Memorial Affairs (2009) WL 786861 (statement of Rep. Doug Lamborn) ("Congress established this broad threshold in recognition of the chaotic nature of battle and the appropriateness of resolving every reasonable doubt in favor of the veteran.").

Operation Enduring Freedom (OEF)²³. There are a number of reasons for these documentation challenges; the greatest being the U.S. Department of Defense (DOD) policy that prohibits the assignment of female soldiers to units whose primary mission is to engage in direct ground combat operations.²⁴ Historically, women have been banned from assignment to combat roles,²⁵ and even today the ban exists with regard to land combat operations.²⁶ However, the theaters of Iraq and Afghanistan have been unlike any almost any other in the history of American war. Soldiers describe 360 degree battlefields with no clear front lines.²⁷ As a result, women have often found themselves engaging in direct land combat action.²⁸

Cultural sensitivities of the wars in Iraq and Afghanistan have created unique problems for which female soldiers have been used to solve. For example, female soldiers have been, and continue to be, recruited on missions in order to search Iraqi and Afghan women who, based on traditional custom, are not allowed to be touched by males.²⁹ These women are known as Lionesses.³⁰ The Lioness program was founded by Army Colonel William D. Brinkley in order to resolve

²³ Interview with captain Lory Manning, *supra* note 3; *see generally* Post-Traumatic Stress Disorder Legislation: Hearing before the House Subcommittee on Disability Assistance and Memorial Affairs Committee on House Veterans Affairs (2009) WL 1090778 (statement of Rep. John Hall) (“We also know from the RAND report that one out of every five service members who service in OEF or OIF suffers from symptoms of PTSD.”).

²⁴ *See* Les Aspin, Secretary of Defense, “Direct Ground Combat Definition and Assignment Rule,” memorandum (January 13, 1994) available at <http://cmrlink.org/cmrrnotes/lesaspin%20dgc%20defassign%20rule%20011394.pdf>. (This memo amended the 1988 former DOD “Risk Rule” which excluded women from noncombat units or missions if the risks of exposure to direct combat was equal to or greater than the risk in the combat units they supported.) [hereinafter *Aspin Memo*]; *see also* RAND Report, 1 (2007); GAO Report, Information on DOD’s Assignment Policy and Direct Ground Combat Definition, (Oct. 1998). [hereinafter *GAO Report 1998*].

²⁵ *See* FEMALE SOLDIERS-COMBATANTS OR NONCOMBATANTS? HISTORICAL AND CONTEMPORARY PERSPECTIVES, (Nancy Loring Goldman ed., Greenwood Press 1982).

²⁶ Aspin Memo, *supra* note 24; GAO Report 1998, *supra* note 21.

²⁷ LIONESS (Room 11 Productions 2008); Talk of the Nation, ‘Lioness’: Female Soldiers’ First Forays into Combat, NPR (July 19, 2008), available at <http://www.npr.org/templates/story/story.php?storyId=91698225>; The Diane Rehm Show, Interview with Helen Bendict, WAMU (April 1, 2009), available at wamu.org/programs/dr/09/04/01.php.

²⁸ Rand Report, 49 *supra* note 24.

²⁹ LIONESS, *supra* note 27; Rand Report, 53 *supra* note 24.

³⁰ LIONESS, *supra* note 25 (The Lionesses have been used in ground operations since 2003).

the cultural tensions caused by male soldiers searching local women.³¹ Col. Brinkley stated that the Lioness program was never officially established, but was created, and continues to be used, on an *ad hoc* basis to accommodate cultural taboos with regard to performing necessary searches.³² Female troops are attached to units for special missions where search techniques will be implemented.³³ These missions may require entry into combat zones and female soldiers are trained and expected to fight in combat action if necessary.³⁴ These women are recruited from non-combat military occupational specialties, such as cook, vehicle mechanic, or supply clerk, and, as a result, have found themselves engaging in direct combat with the enemy.³⁵ Despite their heroism in this capacity, these women have not received the combat recognition that they deserve.

This lack of combat recognition not only damages a female soldier's pride and future military career,³⁶ it damages her potential to prove service connection should she later be diagnosed with PTSD as a result of the combat action.³⁷ Lack of recognition may result in the failure to receive a combat action award, or lack of notation of the combat action in her file. Either way, it represents a lack of documentation that may ruin any future disability claim with VA.

Currently, each Lioness must show a diagnosis of PTSD related to combat action and provide evidence that she was engaged in combat.³⁸ Such evidence may be in the form of an award indicating combat action such as a Purple Heart, Bronze Star,

³¹ Interview with Col. William D. Brinkley, (May 22, 2009). (stating that the Lioness program is not uniform service-wide or Army-wide and not all units who recruit females for search purposes call them "Lionesses.") [hereinafter *Col. Brinkley Interview*].

³² *Id.*

³³ *Id.*

³⁴ LIONESS, *supra* note 27; see RAND Report 2007 *supra* note 24.

³⁵ LIONESS, *supra* note 27; see RAND Report 2007 *supra* note 24.

³⁶ U.S. GAO, *Combat Exclusion Laws for Women in the Military* (November 1987) (Stating that a major impact of the policy has been to "...inhibit the career progression of women in the military by excluding them from some jobs they are capable of filling.").

³⁷ See 38 C.F.R. § 3.304(f)(1).

³⁸ *Id.*

or Combat Action Badge.³⁹ The problem with this type of evidence is that combat action must be precisely and accurately documented in order to receive a combat award.⁴⁰ When soldiers are authorized to receive the Combat Action Badge (CAB), officers work diligently to remember who participated in each unit operation.⁴¹ However, there is always the potential for deserving soldiers to fall through the cracks.⁴² If there is no evidence of a combat action award in the service records, there will be less, if any, evidence that the veteran engaged in combat, thus requiring corroborating evidence to meet a higher burden of proof.⁴³

Another type of evidence that can be used to identify combat action includes unit verification. However, if a female soldier was attached to a combat unit as part of a classified mission, it would not be documented in her service records.⁴⁴ An investigation into the battalion or unit history may show that Lioness support operations were used, but it would not show the individual names of each Lioness who participated; and therefore, could not be used to verify combat action.⁴⁵ Thus, documentation in a Lioness' service records would only show her non-combat military occupational specialty and would not reflect her activity in the unit to which she was attached during a mission. Currently, there is no way to document service as a Lioness.⁴⁶

³⁹ *Id.*

⁴⁰ Col. Brinkley interview, *supra* note 31.

⁴¹ *Id.*

⁴² *Id.*

⁴³ Statement of Paralyzed Veterans of America before the Committee on House Veterans Affairs Subcommittee on Disability Assistance and Memorial Affairs (2008) WL 2381894 (“While VA recognizes the receipt of certain medals as proof of combat, only a fraction of those who participate in combat receive a qualifying medal. Further, military personnel records do not document combat experiences except for those who receive certain medals. As a result, veterans...are forced to try to provide evidence that does not exist or wait a year or more while the DOD conducts research to determine whether a veteran’s unit engaged in combat.”).

⁴⁴ Col. Brinkley interview, *supra* note 31.

⁴⁵ *Id.*

⁴⁶ *Id.*

Testimony from a group of Lionesses who engaged in combat action while serving in Iraq indicated that service records did not show any evidence of their service as a Lioness, much less any evidence of participation in combat activity.⁴⁷

Specifically, Army Staff Sergeant Ranie Ruthig stated that her service records show no evidence that she ever served as a Lioness.⁴⁸ She also stated that without the documentary film *Lioness*, which featured her as a combat soldier, she believes that she would not have had the documentation necessary to prove combat action.⁴⁹ Rebecca Nava, a former Army soldier, stated that her VA claims were initially denied due to lack of documentation of combat action.⁵⁰ Shannon Morgan left the Army just before it began awarding CABs to soldiers who engaged in combat outside of infantry units; therefore, she received no combat award to serve as evidence that she was a combat veteran.⁵¹

The Army implemented the CAB in May 2005, several years after many soldiers had already deployed and returned home.⁵² Although the CAB may be awarded retroactively to September 2001,⁵³ it requires detailed paperwork recalling the specifics of the combat action that is increasingly difficult to obtain as time passes.⁵⁴ Retired Navy Capt. Lory Manning believes that lack of combat documentation may be an especially significant problem for female veterans

⁴⁷ LIONESS Press Event in Washington, D.C., March 31, 2009. [hereinafter *LIONESS Press Event*]

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ Vietnam Veterans of America Chapter 885, LIONESS SHOW SHEDS LIGHT ON FEMALE SOLDIERS' ROLE IN IRAQ, available at <http://www.vva885.org/cms/content/view/311/2/> (last visited May 21, 2009).

⁵² Army Combat Action Badge Information, available at http://www.army.mil/symbols/combathbadges/Action.html?story_id_key=7285 (last visited May 22, 2009).

⁵³ *Id.*

⁵⁴ Col. Brinkley Interview, *supra* note 31. (Stating that a retroactive award required sworn signatures from supervisors who often could not remember the event, very specific details of the incident, and months of processing paperwork. He also stated that each unit approaches this differently. Some have stricter standards for receiving the award than others.)

serving in Iraq and Afghanistan between 2002 and 2004 due to a lack of awareness that women were engaging in combat at that time.⁵⁵

Not only may female veterans have difficulty finding documentation of combat action in their service records, they may have difficulty obtaining a medical diagnosis of PTSD related to that combat action. In Shannon Morgan's experience, male VA doctors tend not to believe female veterans' stories of combat. At a 2009 Lioness press event, she stated, "Women are questioned [about combat] whereas men are not. We shouldn't have to prove ourselves. We've done it already."⁵⁶ Morgan is a former Lioness with a 100% disability rating for PTSD after serving in Iraq.⁵⁷

Lack of combat documentation is an issue for every veteran filing claims because a combat action situation does not lend itself to paperwork.⁵⁸ However, accurate documentation of combat action poses an extra challenge for women due to the Congressional policy banning the assignment of women to combat units or combat specialties.⁵⁹ The reasons for the ban will not be addressed in this article, but there is anecdotal evidence that the ban is harmful to females because it creates internal pressure to exclude documentation of combat with regard to female soldiers⁶⁰ and it serves to promote an outdated belief that women do not engage in combat.⁶¹ Therefore, the same Congressional policy that tries to protect women

⁵⁵ Interview with Capt. Lory Manning, *supra* note 3.

⁵⁶ LIONESS Press Event, *supra* note 46.

⁵⁷ MILITARY TIMES, BILL AIMS TO IMPROVE SERVICES FOR FEMALE VETS, April 10, 2009.

⁵⁸ Post-Traumatic Stress Disorder Legislation (2009) WL 1090776 (statement of Barton F. Stichman) ("VA spends a relatively great deal of time attempting to obtain corroborative evidence in PTSD cases, and after these extensive efforts, VA ends up denying many claims that are truly meritorious simply because no evidence exists to corroborate the stressful events.").

⁵⁹ Aspin Memo, *supra* note 24.

⁶⁰ Interview with Capt. Lory Manning, *supra* note 3 (stating, "I've heard rumors that some unit commanders haven't done it, especially in the early days of the war, because the things women have been doing violate Army and/or Marine Corps policies on women's utilization.").

⁶¹ See LIONESS, *supra* note 27 (This concept comes from a lack of awareness about the fact that the wars in Iraq and Afghanistan are wars in which there are no clear front lines).

from the dangers of combat action⁶² may actually stifle their entitlement to much needed disability compensation later in life. Today, the reasons behind the ban are moot because women are already on the front lines engaging in combat everyday in Iraq and Afghanistan.⁶³ At this point, the ban only serves to promote a lack of documentation of their combat action in their service records, which may in turn extinguish a veteran's potential future disability claim for PTSD. Therefore, the ban is more harmful than helpful and must be lifted in order for female veterans to get the recognition and the care that they deserve.

Creating a form of recognition specifically for female combat veterans could provide relief where there is otherwise no evidence of their combat service. Lieutenant Colonel Connie Christensen, President of Vietnam Veterans of America Chapter 23, recommends the creation of a Lioness Service Ribbon.⁶⁴ Such a ribbon would help prove that a Lioness engaged in combat, but it would not help others who were not specifically Lionesses, yet also engaged in combat. For example, it would not help female soldiers who engaged in ground combat, but were not recruited for Lioness missions or who are not specifically named as Lionesses.⁶⁵ Women who serve as medics,⁶⁶ cooks, armor carriers and mechanics are often attached to units for special missions.⁶⁷ These women are not Lionesses, because they are not recruited to search the local female population, but, like the Lionesses, their experiences are the same as their unit and they are expected to

⁶² U.S. GAO, *Combat Exclusion Laws for Women in the Military*, (November 1987) (“The common theme in the application of the combat exclusion provisions seems to be an effort to preclude women from the most frequent or severe exposure to the risks of war.” “The impact is to preclude women from front line fighting roles and to provide some degree of protection.”).

⁶³ LIONESS, *supra* note 27; Col. Brinkley, *supra* note 31.

⁶⁴ LIONESS Press Event, *supra* note 46.

⁶⁵ *Id.* (stating that both the Army and Marines use women in Lioness-type roles, but not all are named Lionesses).

⁶⁶ RAND Report at 52, *supra* note 24 (“The importance given to respecting the Iraqi culture also meant that female medics were sought out on a regular basis to interact with Iraqi women in their capacity as health care providers.”).

⁶⁷ *Id.*

fight if a combat situation arises.⁶⁸ Therefore, the creation of a Lioness ribbon alone will not solve the problem regarding lack of combat documentation for female service members. In a practical sense, the ribbon must be established in conjunction with lifting the ban against females in combat roles. This is the only way to ensure that female combat veterans are recognized for combat service and are awarded their earned VA disability benefits.

Not only must Congress lift the ban and establish a Lioness Service Ribbon, but VA adjudicators must thoroughly investigate claims of combat action when a female veteran is claiming PTSD due to land combat action. VA adjudicators must not dismiss a claim simply because a veteran is female and thus technically banned from combat roles. Adjudicators also must not deny a claim or require corroborating evidence simply because a woman's military occupational specialty was non-combat related. VA adjudicators should order any and all records possible to determine whether a female soldier served as a Lioness, or was attached to a separate unit or battalion other than that which is reported in her service records.⁶⁹

III. **SERVICE CONNECTION FOR PTSD DUE TO MILITARY SEXUAL TRAUMA**

The second regulation, under which female veterans face a different and more difficult evidentiary standard than male veterans, is the VA regulation governing service connection for PTSD due to personal assault.⁷⁰

⁶⁸ *Id.*

⁶⁹ Post-Traumatic Stress Disorder Legislation (2009) WL 1090776 (statement of Barton F. Stichman) (“VA spends a relatively great deal of time attempting to obtain corroborative evidence in PTSD cases, and after these extensive efforts, VA ends up denying many claims that are truly meritorious simply because no evidence exists to corroborate the stressful events.”).

⁷⁰ M21-1MR, Part IV, Chapter 1, Section D, Developing Claims for Service Connection for PTSD Based on Personal Trauma, available at http://vbaw.vba.va.gov/bl/21/M21-1MR/pt04/ts_field/pt04_sp02_ch01_secD_field_09-05-08.doc (VA interchangeably uses the term

In sum, in order to establish service connection for PTSD due to military sexual trauma, the veteran must show; 1) a diagnosis of PTSD; 2) that the PTSD is related to a military sexual trauma that occurred during active service, and; 3) corroborating evidence of the trauma.

Personal assault is defined as personal trauma that threatens or inflicts harm.⁷¹ Specifically, VA's definition of personal assault includes military sexual trauma (MST). Military sexual trauma includes any type of sexual assault or sexual harassment which happens on active duty. It can occur during peacetime, war time and during training activities.⁷² Congress defines sexual trauma as physical assault of a sexual nature, battery of a sexual nature, or sexual harassment which occurred while the veteran was serving on active duty or active duty for training.⁷³ Although VA regulations governing PTSD due to MST do not provide a clear definition of rape, sexual assault, sexual battery, or sexual harassment, the Department of Defense (DOD) defines sexual assault as:

[I]ntentional sexual contact, characterized by use of force, physical threat or abuse of authority or when the victim does not or cannot consent. It includes rape, non consensual sodomy (oral or anal sex), indecent assault (unwanted, inappropriate sexual contact or fondling), or attempts to commit these acts. Sexual assault can occur without regard to gender or spousal relationship or age of victim. "Consent"

"personal trauma" defined as an event of human design that threatens or inflicts harm. Examples of personal trauma include rape, physical assault, domestic battering, robbery, mugging, stalking and personal harassment." [hereinafter *VA's definition of personal assault*]

⁷¹ VA's definition of personal assault, *supra* note 66.

⁷² National Center for PTSD Fact Sheet available at www.ncptsd.va.gov/ncmain/mcdocts/fact_shts (last visited Sept. 24, 2008); TS Nelson Publications, Consulting and Training, *COPING WITH MILITARY SEXUAL TRAUMA*, available at http://www.tsnelson.com/for_veterans--coping_with_military_sexual_trauma (last visited May 21, 2009).

⁷³ 38 U.S.C. §1720D (2006) (section governing counseling and treatment for sexual trauma).

shall not be deemed or construed to mean the failure by the victim to offer physical resistance. Consent is not given when a person uses force, threat of force, coercion, or when the victim is asleep, incapacitated, or unconscious.⁷⁴

Unlike PTSD due to combat, PTSD due to personal assault, including MST, requires corroborating evidence which supports the veteran's claim.⁷⁵ However, much like combat, the circumstances of MST often do not lend themselves to documentation.

Because MST is an extremely personal and sensitive issue, many incidents are not officially reported, which makes proving the occurrence of the claimed stressor difficult. It is not unusual for there to be an absence of service records documenting the events the veteran has alleged as the source of the claim. Therefore, when a veteran files a claim for PTSD based on MST, evidence from sources other than the veteran's service records may be used to corroborate an account of a stressor incident.⁷⁶ 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.⁷⁷

Evidence of behavior changes following the claimed assault is one type of relevant evidence that may be found in these sources. Examples of behavior changes that

⁷⁴ Department of Defence FY 2008 Report on Sexual Assault in the Military (March 2009) available at http://www.sapr.mil/contents/ResourcesReports/AnnualReports/DoD_FY08_Annual_Report.pdf [hereinafter *DOD Report 2008*]; Russll W. Strand, NEW MILITARY SEXUAL ASSAULT POLICIES-BUILDING A BRIDGE OF TRUST, Military Police PB 19-05-2, available at <http://www.wood.army.mil/MPBULLETIN/pdfs/Oct%2005/Strand.pdf>. (a definition for sexual harassment was not found.)

⁷⁵ See *Moreau*, 9 Vet. App. 396; see also *Doran*, 6 Vet. App. 288-89.

⁷⁶ See, e.g., *Patton v. West*, 12 Vet. App. 272, 277 (1999).

⁷⁷ *Id.*

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.⁷⁸ 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.⁷⁹

Females are more likely to experience MST than their male counterparts. The National Center for PTSD reports that, among veterans currently using VA healthcare, roughly 23% of women reported sexual assault in the military and 55% reported experiencing sexual harassment, whereas only 38% of men reported sexual harassment.⁸⁰ According to DOD's 2007 Report on Sexual Assault in the Military, in that year, sexual assault reports showed that over 90% of the victims were female in both unrestricted and restricted reports.⁸¹ Sexual assault reports filed in 2004, 2005, and 2006 showed that almost 95% of victims were women.⁸² Restricted reports of sexual harassment filed in 2007 showed that 95% of the victims were female and 5% of the victims were male.⁸³ According to DOD's Aggregate Report of Sexual Assault Incidents for 2008, there were 2,908 reports of sexual assault involving military service members, in which approximately 86% of the reports indicated a military service member as the victim.⁸⁴ In over 91% of those cases, the victim was female.⁸⁵

⁷⁸ *Id.*

⁷⁹ *Id.*; see also Rating Job Aids-PTSD Personal Assault Information <http://vbaw.vba.va.gov> (last visited May 18, 2009). [hereinafter *Rating Job Aids-Personal Assault*]

⁸⁰ National Center for PTSD Fact Sheet, *supra* note 68. (The figures for reported male sexual assault could not be located at this center.)

⁸¹ DOD FY 2007 Report on Sexual Assault in the Military, (March 2008) available at <http://www.sapr.mil/contents/references/2007%20Annual%20Report.pdf> [hereinafter *DOD report 2007*].

⁸² *Id.*

⁸³ *Id.*

⁸⁴ DOD Report 2008, *supra* note 70.

⁸⁵ *Id.*

It is important to keep in mind that all of these statistics show only the *reported* assaults and do not include any unreported assaults that may have occurred. DOD has indicated that under reporting poses a serious challenge to getting an accurate count of the number of attacks occurring each year.⁸⁶ A September 2005 news release by the U.S. House of Representatives indicated that, when considering non-reported assaults, MST in the National Guard and Reserve components may be as high as 60% among females and 27% among males.⁸⁷ Other sources estimate that between 30% and 70% of women in the military are sexually assaulted and between 60% and 90% are sexually harassed.⁸⁸ Although DOD has implemented a restricted reporting process which allows victims to report attacks anonymously without pressing charges,⁸⁹ some victims' advocates say that these attacks are still under reported even though the number of reports has generally increased.⁹⁰

Females are highly likely to develop PTSD after a military sexual trauma has occurred, more so than after a non-military sexual trauma.⁹¹ According to the National Center for PTSD, women are more likely than men to experience PTSD due, in part, to the fact that women are more likely to experience sexual assault.⁹² PTSD studies show that between 40% and 60% of female victims of MST develop PTSD.⁹³ There are many explanations for this. Victims must continue to live and work closely with their perpetrators while in service. Victims often must rely on

⁸⁶ *Id.*

⁸⁷ House Committee on Veterans Affairs News Release (September 29, 2005) available at

⁸⁸ Military Rape Crisis Center; www.stopmilitaryrape.org (last visited Oct. 24, 2008); The Diane Rehm Show, *supra* note 23.

⁸⁹ DOD Report 2008, *supra* note 74.

⁹⁰ WASHINGTON POST, Reported Cases of Sexual Assault in the Military Increase, May 7, 2005; *see* The Diane Rehm Show, *supra* note 27.

⁹¹ National Center for PTSD Fact Sheet, *supra* note 68.

⁹² National Center for PTSD Research on Women, Trauma and PTSD; http://www.ncptsd.va.gov/ncmain/ncdocs/fact_shts/fs_womenptsdprof.html?opm=1&rr=rr1765&srt=d&ec_horr=true (last visited May 9, 2009) [hereinafter *National Center for PTSD Research*].

⁹³ *Id.*

their perpetrators to provide basic needs in service. Often times, the attacker is someone that the victim respected.⁹⁴ According to the National Center for PTSD, “[t]he victim’s one-time safe haven is now a place of anxiety and bad memories.”⁹⁵ In a 2007 report by VA Women’s Center MST Support Team, 83% of women who were treated for MST-related encounters were also treated for mental health problems such as PTSD.⁹⁶

Despite the frequency of MST and the mental anguish that victims cope with, female victims are unlikely to report MST for numerous reasons including fear of being ridiculed by peers, ostracized, retaliated against,⁹⁷ humiliated,⁹⁸ or forced to discharge early.⁹⁹ For example, in *YR v. West*, the victim of an in-service rape stated that she did not report the attack for fear of retribution and of losing her security clearance.¹⁰⁰ Furthermore, the process for prosecuting an attacker can be very difficult due to lack of evidence and unwillingness among soldiers to speak as witnesses.¹⁰¹ As a result, many attackers go unpunished and those that are punished, are often merely demoted in rank or docked in pay and do not spend any time in prison.¹⁰² According to VA Center for Women Veterans Associate Director, Dr. Betty Moseley-Brown, most sexual attacks happen to lower ranking

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ VA Patient Care Services Office of Mental Health Services, U.S. Dep’t of Veterans Affairs, Summary of Military Sexual Trauma-Related Outpatient Care, (2007).

⁹⁷ See Walter Goodman, Tailhook Scandal’s Long Shadows, THE NEW YORK TIMES, October 15, 1996, available at www.nytimes.com (last visited May 14, 2009); Betrayal in the Ranks, THE DENVER POST, http://extras.denverpost.com/justice/tdp_betrayal.pdf.

⁹⁸ Betrayal in the Ranks, *supra* note 94.

⁹⁹ Miles Moffeit, Sex-Assault Cases From Iraq Often Stall, THE DENVER POST, May 18, 2005, available at www.denverpost.com/betrayal/ci_0002078272, (last visited April 27, 2009); Marilyn Elias, USA TODAY, October 28, 2008; WASHINGTON POST, *supra* note 90; Betrayal in the Ranks, *supra* note 94.

¹⁰⁰ *YR v. West*, 11 Vet. App. 393, (1998). (In this case the victim reported that her attackers had threatened to kill her if she reported the attack. She also stated that she believed that reporting the [in-service] sexual assault would have compromised her security clearance. The victim’s sister stated that she did not report the assault due to her sister’s fear of retribution and losing her security clearance.)

¹⁰¹ Miles Moffeit, *supra* note 96.

¹⁰² Miles Moffeit, *supra* note 96; see also Betrayal in the Ranks, *supra* note 94.

females and are not punished as severely as attacks on female officers.¹⁰³ This provides little incentive for victims of MST to report an attack, which ultimately leads to a lack of documentation in the service records. This lack of documentation in a veteran's service records makes the evidentiary burden a difficult hurdle to overcome. Although VA has tried to take documentation issues into consideration when writing the regulation for granting service connection for PTSD,¹⁰⁴ it failed to consider that documentation post service may be very difficult to find as well.

According to Dr. Moseley-Brown, it is common for women who experience MST to have experienced an attack by a non-service member prior to service.¹⁰⁵ Due to these past experiences, women may be so afraid or ashamed that they learn to live with sexual trauma instead of reporting it.¹⁰⁶ Dr. Moseley-Brown also stated that it is not uncommon for women to cover up an attack after it has occurred or hide it for decades.¹⁰⁷ Deputy Director for VA Benefits, Michael MacDonald confirmed that a lack of documentation is the number one issue when it comes to handling claims for MST-related PTSD.¹⁰⁸ Therefore, it can be concluded that many women who suffer from PTSD due to MST do not report the incident during or for many years after service which leads to a lack of documentation of the trauma. Despite recognizing the problem of lack of documentation, VA requires a veteran to present corroborating evidence of MST in order to prove her case.¹⁰⁹

¹⁰³ Interview with Dr. Betty Moseley Brown, Director of VA Women's Center, Nov. 7, 2008; see The Diane Rehm Show, *supra* note 27.

¹⁰⁴ See 38 C.F.R. § 3.304(f).

¹⁰⁵ Interview with Dr. Moseley-Brown, *supra* note 103

¹⁰⁶ *Id.*

¹⁰⁷ Interview with Dr. Moseley-Brown, *supra* note 103; see *YR*, *supra* note 97 (the victim reported covering injuries with make-up after an assault.).

¹⁰⁸ Interview with Michael MacDonald, Deputy Director for Benefits, U.S. Dep't of Vet. Affairs (March 23, 2009).

¹⁰⁹ See Rating Job Aids-PTSD Personal Assault, *supra* note 75.

The first hurdle in establishing PTSD due to MST is presenting a medical diagnosis of PTSD.¹¹⁰ After a veteran has presented the diagnosis, she must then provide evidence linking the diagnosis to an in-service sexual assault.¹¹¹ However, there is yet another hurdle that must be surmounted which requires corroborating evidence proving that the assault occurred.¹¹² Because such evidence is often not found in the veteran's service records,¹¹³ the adjudicator is required to consider evidence outside the service records such as documentation from 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.¹¹⁴ However, as indicated above, such documentation may be difficult to obtain. Many victims do not seek treatment for years, even decades after service, if at all. Often, they seek treatment for mental problems or other disorders not realizing that current mental health issues are related to, or the result of, a past military sexual trauma.¹¹⁵

Where there is no documentation of MST, adjudicators may also consider evidence of behavioral changes following the claimed assault, such as 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.¹¹⁶ However, Dr. Moseley-Brown indicated her belief that adjudicators look for obvious, blatant, concrete evidence, rather than subtle, nuanced evidence

¹¹⁰ 38 C.F.R. § 3.304(f).

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *See YR, supra* note 97.

¹¹⁴ *See* 38 C.F.R. § 3.304(f).

¹¹⁵ National Center for PTSD Research, *supra* note 89; *see YR, supra* note 97 (after discharge, the victim of an in-service assault was treated for various maladies including alcoholism, nerves, anxiety and flashbacks in conjunction with PTSD)

¹¹⁶ *See* 38 C.F.R. § 3.304(f); *see also* Rating Job Aids-PTSD, *supra* note 75 (stating, in essence, when working on a PTSD claim based on personal assault, an adjudicator must make his motto "Grant if you can, deny if you must.")

which is more likely to be in the claims file.¹¹⁷ This makes the burden of proof even more difficult for victims to overcome. For example, after an attack, a victim may experience physical or emotional problems and each victim manifests symptoms differently.¹¹⁸ Some victims may show more obvious signs such as an exaggerated startle response or edginess with outbursts of anger.¹¹⁹ Others may experience symptoms that are more ambiguous, such as lack of appetite, or trouble sleeping.¹²⁰ Furthermore, interpretation of these symptoms is completely subjective and the determination whether such symptoms are considered evidence of PTSD due to MST is ultimately dependent on the VA rating specialist, attorney, and judge who review the case.¹²¹

Although VA adjudicators are required to weigh the credibility and probative value of evidence and provide adequate rationale for denying a claim,¹²² even cases with strong corroborating evidence may still be denied. For example, in *YR v. West*, there was substantial corroborating evidence, including multiple medical reports showing treatment for mental illness after service, several diagnoses of PTSD linked to an in-service assault, and detailed testimony from the victim's sister reporting observable physical injuries just two days after the assault.¹²³ Yet, the claim was denied for lack of corroborating evidence at both the Regional Office (RO) and Board levels.¹²⁴ This case differs from many cases in which the victim cannot offer much, if any, corroborating evidence and have an even greater chance of being denied disability benefits by the RO or the Board. Due to

¹¹⁷ Interview with Dr. Betty Moseley Brown, Director of VA Women's Center (March 27, 2009).

¹¹⁸ National Center for PTSD Research, *supra* note 89.

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ See Post-Traumatic Stress Disorder Legislation (2009) (statement by Rep. John J. Hall) ("...the process to adjudicate disability claims is complex, legalistic and protracted, and particularly difficult for veterans because of the stresses and uncertainties involved while facing skeptical and cynical attitudes of VA staff.").

¹²² *YR*, *supra* note 97.

¹²³ *Id.*

¹²⁴ *Id.*

subjectivity in interpreting corroborating evidence, the standard for determining the credibility and probative value of such evidence is likely to vary between adjudicators.

Though an argument might be made for characterizing corroborating evidence more precisely, Dr. Moseley-Brown contends that VA should accept the veteran's testimony and a diagnosis of PTSD without requiring any corroboration of the attack, "Currently, MST victims are re-victimized by VA claims process."¹²⁵ Anticipating concerns of an inundation of fraudulent claims if corroborative evidence were no longer required by VA, Dr. Moseley-Brown refutes such likelihood.¹²⁶ She points out that because MST is such a shameful experience that can cause professional and social hardship, female veterans would be unlikely to file fraudulent claims in order to receive VA disability benefits.¹²⁷ However, presently "Congress, who writes VA regulations, would rather prevent 10 deserving veterans from getting the help they need, than risk one undeserving veteran beating the system."¹²⁸ This is in direct contrast VA's policy giving the benefit of the doubt to the veteran in each case.¹²⁹

Currently, VA PTSD regulations disparately impact female veterans because they require female veterans to meet a higher evidentiary standard than male veterans. These regulations are more burdensome to female veterans than male veterans due to a higher evidentiary standard in the MST regulation that affects female veterans in large majority.¹³⁰ More specifically, the evidentiary burden for proving PTSD

¹²⁵ Interview with Dr. Moseley-Brown, *supra* note 114.

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ Interview with Captain Lory Manning, *supra* note 3.

¹²⁹ 38 U.S.C. § 1157(b), *Gilbert*, 1 Vet. App. at 55.

¹³⁰ See National Center for PTSD Research, *supra* note 89; Military Rape Crisis Center website, www.stopmilitaryrape.org (last visited October 24, 2008).

due to combat is lower than the evidentiary burden for proving PTSD due to MST, yet both regulations govern circumstances that are commonly undocumented.¹³¹

Although VA regulations were designed to be gender neutral, addressing the disability category of the veteran rather than the sex of the veteran, the numbers show a disparate impact on female veterans. Generally, male veterans tend to suffer from PTSD due to combat whereas female veterans tend to suffer from PTSD due to MST.¹³² Statistics show that veterans who file claims for MST-related PTSD are mostly female¹³³ whereas veterans who file claims for combat related PTSD are mostly males.¹³⁴ Since 2002, for example, nearly 90% of all combat-related PTSD claims were filed by male veterans and over 65% of all MST-related PTSD claims were filed by female veterans.¹³⁵ Therefore, among female veterans, PTSD due to MST is much more prevalent than PTSD due to combat.¹³⁶ The combat regulation requires no corroborative evidence to show combat-related PTSD.¹³⁷ The only evidence required is 1) a diagnosis of PTSD related to combat and 2) any evidence of combat service without corroboration of the occurrence of the veteran's specific combat stressor.¹³⁸ The evidence need only show, for example, that the veteran was awarded a combat medal, or that his unit was stationed the vicinity of a verified combat incident in order to show that the in-service stressor he claims actually occurred.¹³⁹ By contrast, a woman suffering from MST-related PTSD must, essentially, present proof that the sexual attack actually occurred.¹⁴⁰ Therefore, a combat veteran, who is typically male,

¹³¹ See generally 38 C.F.R. § 3.304(f); *but see* 38 C.F.R. § 3.304(f)(1).

¹³² National Center for PTSD Research, *supra* note 89.

¹³³ VA data request services, (In 2008, female veterans filed 66.5% of all MST-related PTSD claims).

¹³⁴ *Id.*, (In 2008, male veterans filed 91.64% of all combat-related PTSD claims).

¹³⁵ *Id.*

¹³⁶ It should be noted that females were not traditionally assigned to combat roles.

¹³⁷ See 38 C.F.R. § 3.304(f)(1).

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ See 38 C.F.R. § 3.304(f); M21-1MR, Part IV, Sub part ii, Chapter 1, Section D, Developing Claims for Service Connection for PTSD Based on Personal Trauma (VA requires an approximate balance of positive and negative evidence that the event did occur.).

need not present evidence of his specific involvement in the fire fight that he claims as his stressor, but, the MST veteran, who is almost always female, must provide evidence that she was attacked. As a result, the evidentiary standards are inherently unequal for male and female veterans, yet the reasoning behind the differing evidentiary standards is unclear.

Like combat, the circumstances of MST are often undocumented. Therefore, VA regulations require adjudicators to look for alternative supporting evidence of an assault outside of service records.¹⁴¹ However, just as VA requires that combat veterans provide only the approximate location, date, and time of the combat stressor,¹⁴² it should require no more from victims of MST. The female veteran should not have to meet a higher burden of proof than a combat veteran when her situation is equally likely to go undocumented. Some might argue that the lesser burden of proof for the combat regulation is out of honor and respect for those who served in combat, but female veterans who served in the military despite statistics showing a high probability of sexual assault deserve to be honored as well. Although unintentional, these regulations present different and unequal standards for male and female veterans and must be revised. VA regulations governing MST-related PTSD must be changed in order to lessen the burden of proof for victims of MST. VA should ask for no more than the veteran's testimony of the attack and a medical diagnosis of PTSD connected to MST.

Although this article focuses primarily on the disparate impact on female service members, it must be noted that VA's MST regulation is not only unfavorable to female veterans who are victims of MST; it is also unfavorable to male victims.

¹⁴¹ *Id.*

¹⁴² M21-1MR, Part IV, Subpart ii, Chapter 1, Section D, Requesting Evidence That a Stressor Occurred, http://vbaw.vba.va.gov/bl/21/M21-1MR/pt04/ts_field/pt04_sp02_ch01_secD_field_09-05-08.doc. (Stating that at a minimum, the veteran must provide a stressor that can be documented, the location where the incident took place, the approximate date of the incident and the unit of assignment at the time of the stressful event.)

Evidence shows that males are more likely than females to experience PTSD after a sexual attack, though they are not as frequently victimized.¹⁴³ Although it is generally more common for male soldiers to develop PTSD as a result of a combat experience, they have a higher chance of developing PTSD from MST due to the shame and taboo of such an attack.¹⁴⁴ Research indicates that men have about a 65% chance of developing PTSD after a sexual assault, whereas they only have about a 39% chance of developing PTSD after combat exposure.¹⁴⁵ Yet, the burden of proof for MST veterans is higher than for combat veterans. Therefore, the proposed changes in VA regulations would help male MST victims as well as female victims.

In light of the discussion above, the current PTSD regulation for MST should be revised so that it no longer requires corroborating evidence. The requirement of such evidence presents an unduly difficult burden of proof for victims, mostly female, to meet when presenting a claim for disability benefits. Such evidence, during or after service, is unlikely to exist and forces a victim to relive the attack all over again. Furthermore, the evidentiary standard for MST victims, though intended to be gender neutral, discriminates against female veterans because it imposes a higher evidentiary burden for entitlement to service connection for PTSD than regulations affecting mostly male veterans. Eliminating the requirement for corroborative evidence would equalize the effect of the PTSD regulations on male and female veterans as well as free adjudicators from relying on subjective interpretations of evidence presented in the claims file. VA should simply do away with the requirement for corroboration and accept a medical diagnosis of PTSD linked to MST and the veteran's testimony to show service connection for PTSD due to MST.

¹⁴³ National Center for PTSD Research, *supra* note 89.

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

Considering the sensitive nature of MST, the common problem of lack of documentation of an attack, and the hesitancy to seek treatment, the evidentiary burden placed on victims, who are mostly female, is too high.

IV. CONCLUSION

VA regulations affecting female veterans are a major concern for both VA and Congress. Currently, female veterans constitute the fastest growing subgroup of the total veteran population, comprising 7%.¹⁴⁶ The number of PTSD claims filed by female veterans is growing as well. In 2008, female veterans filed 5.5% of all PTSD claims, up from 2.73% in 2002.¹⁴⁷ By contrast, the number of PTSD claims filed by males decreased from almost 96% in 2002 to nearly 92% in 2008.¹⁴⁸ Since 2002, approximately 11% of all disability claims filed with VA have been for PTSD, totaling over 600,000 claims.¹⁴⁹

In order to ensure equal treatment of male and female veterans, VA regulations should be tailored to treat male and female veterans equally. Based on the arguments set forth in this article, it is not enough for VA to write regulations based on the veteran's disability, but VA must consider the disparate impact that seemingly gender neutral regulations have on female veterans and adjust these regulations accordingly. Congress should alleviate the female combat veteran's unduly heavy evidentiary burden for proving combat stressors due to lack of combat documentation in their service records. Specifically, Congress should 1) create a special service ribbon for Lionesses¹⁵⁰, and 2) lift the ban restricting

¹⁴⁶ Lioness screening and panel discussion event [hereinafter *Lioness*], in Washington, D.C., (March 31, 2009); Office of Policy and Planning National Center for Veterans Analysis and Statistics (008A3) (9/30/07); MILITARY TIMES, *supra* note 57.

¹⁴⁷ VA data request services. (May 27, 2009)

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ In creating this ribbon, Congress must officially establish the Lioness program and require uniform implementation between all service branches that use the program.

female soldiers from combat duties to ensure that female veterans get the same disability benefits as male veterans. With regard to claims for MST-related PTSD, Congress should treat these claims differently than other personal assault claims by lowering the evidentiary standard. Congress should not require MST victims to provide corroborating evidence of an attack, but should require only a valid diagnosis of PTSD¹⁵¹ linked to a sexual trauma which occurred during service. More specifically, Congress¹⁵² should rewrite the current PTSD personal assault statute¹⁵³ to exclude claims based on MST and write a separate regulation governing claims exclusively for MST-related PTSD. As noted above, this regulation should require only a diagnosis of PTSD linked to MST. These recommended changes will ensure that our female veterans get the medical care and disability benefits they deserve.

¹⁵¹ See 38 C.F.R. § 3.304(f).

¹⁵² VA could accomplish this as well by revising the regulation 38 C.F.R. § 3.304(f) per Congress' authority as set forth in U.S.C. § 1154(b).

¹⁵³ U.S.C. § 1154(b).