

August 27, 2018

The Honorable Robert Wilkie  
Secretary  
U.S. Department of Veterans Affairs  
810 Vermont Avenue NW  
Washington, DC 20420

Dear Secretary Wilkie:

We write with alarm that veterans experiencing post-traumatic stress (PTS) due to military sexual trauma (MST) are seeing their claims inadequately adjudicated and inappropriately denied by the Veterans Benefits Administration (VBA).

As Under Secretary for Personnel and Readiness, you spearheaded some of the Department of Defense's (DoD) recent reforms regarding sexual violence in the military. Your work firmly established a comprehensive and modern sexual harassment policy within DoD, and you worked diligently to improve DoD's sexual assault prevention efforts. We know that ensuring survivors of MST receive health care and benefits is a high priority for you. In a recent Fox News interview, you acknowledged that the military has changed dramatically since the Vietnam War era, stating: "...[T]he world has changed, and we need to change to meet those needs." Ensuring veterans have their MST-related claims fairly and appropriately considered is one of the most important services you can reform to "meet those needs."

As you are aware, the August 21, 2018 OIG report detailed a series of serious errors with VBA's adjudication of MST-related PTSD claims, errors that led almost half of all MST claims denied.<sup>1</sup> The errors found by the OIG review included failure to request a medical examination despite evidentiary sufficiency; evidence-gathering issues; failure of MST Coordinators and Veterans Service Representatives (VSR) to properly contact veterans by phone or letter for the report of a sexual assault to prove the traumatic event; and, VSR denials based on contradictory or otherwise insufficient medical opinions. This report indicates a widespread failure by VBA to follow-through on its 2011 promise to "liberalize" evidentiary standards for MST-related claims.

OIG reported that these errors were in large-part due to a loss of specialization through the elimination of the Segmented Lanes Organizational Model, which put MST-related claims before special operations teams for appropriate consideration. MST-related claims often require examiners to review *service* records in addition to medical records. Additionally, OIG found the lack of quality control measures, such as an additional level of review or the elimination of special focused quality improvement reviews, negatively affected outcomes. While we are encouraged by VBA's concurrence to OIG recommendations, we broadly request you take

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<sup>1</sup> Approximately 1,300 of the 2,700 MST-related claims were denied during OIG's five-month review period. U.S. Department of Veterans Affairs, Office of Inspector General, "Denied Posttraumatic Stress Disorder Claims Related to Military Sexual Trauma," August 21, 2018. Report #17-05-248-241. Accessed August 23, 2018. <https://www.va.gov/oig/pubs/VAOIG-17-05248-241.pdf>

immediate action to ensure all process and procedures are veteran-centric and conform to current DoD policy—paying focused attention and consideration of immediately returning to the Segmented Lanes Organizational Model.

We also worry that there is a fundamental error with VBA’s M21-1 Adjudication Procedure Manual, which provides VBA national guidance on determination of all claims. The M21-1 states erroneous Department of Defense (DoD) policy on the retainment of restricted reports, records crucial for processing MST-related claims:

*In restricted reporting cases, DoD stores the evidence, including results from the SAFE, for one year following the date of the victim’s report of sexual assault. If the victim does not claim the evidence or elect an unrestricted report within one year, DoD destroys it.<sup>2</sup>*

It is our understanding that this is inaccurate and not current DoD policy. Current DoD policy was published as a rule in the Federal Register on September 27, 2016, pursuant to federal law, and requires the “Victim Reporting Preference Statement” and the “DoD Sexual Assault Forensic Examination (SAFE) Report” to be retained for *50 years*, regardless of the reporting disposition being restricted or unrestricted.<sup>34</sup> Further, DoD made a 2012 announcement that it changed its retainment policy for restricted reports to *5 years*, as required by law.<sup>56</sup> It is unclear how or why VBA policy continues to misstate military policy on the retainment of sexual assault records.

This error may have created adverse outcomes for veterans that were not part of the OIG review. The M21-1 states that VBA reviewers may deny an MST-related claim without a medical examination only if there is no evidence of the stressor, no evidence of a behavioral marker, or no evidence of symptoms of a mental disorder.<sup>7</sup> There is real concern that the rate of inappropriate denials is higher than found by the OIG due to the misperception that key evidence needed to prove the stressor or a behavioral marker is no longer available.

These failures cannot accomplish anything more than dissuade veterans from filing claims for benefits and seeking needed mental health services. In an environment where survivors often refuse to report sexual assaults for fear of retaliation, the VA’s apparent

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<sup>2</sup> M21-1, Part IV, Subpart ii, Chapter 1, Section D - Claims for Service Connection (SC) for Post-Traumatic Stress Disorder (PTSD)

<sup>3</sup> 32 CFR § 105.4 2016: “The DoD will retain the DD Forms 2910, ‘Victim Reporting Preference Statement,’ and 2911, ‘DoD Sexual Assault Forensic Examination (SAFE) Report,’ for 50 years, regardless of whether the Service member filed a Restricted or Unrestricted Report as defined in 32 CFR part 103.”

<sup>4</sup> National Defense Authorization Act for Fiscal Year 2016, Pub. L. No. 114-92, § 541. This section required uniform retainment of all records related to the case file of an alleged sexual assault, as defined under Section 586 of the FY 2012 NDAA.

<sup>5</sup> Major General Mary Kay Hertog, “DOD Implements Changes to Sexual Assault Response,” *American Forces Press Service*: April 2, 2012. Accessed August 22, 2018. <http://archive.defense.gov/news/newsarticle.aspx?id=67792>

<sup>6</sup> National Defense Authorization Act for Fiscal Year 2012, Pub. L. No. 112-81 § 586.

<sup>7</sup> M21-1 Adjudication Procedure Manual, Part I, Chapter 1, Section C, 3.b. note: In fact, the M21-1 further states that such an examination “and/or opinion is not warranted until all three elements described above are present in the evidence.”

inability to fairly treat these claims risks revictimizing survivors. You must instill confidence for survivors by immediately working to resolve these issues.

Consequently, we request you take the following actions:

1. Immediately review all denied MST-related PTS claims as far back as 2012, when DoD revised its record retention practices.
2. Provide an action plan to the congressional Committees on Veterans' Affairs within 30 days of the date of this letter detailing VBA's process for fairly and appropriately adjudicating previously denied MST-related claims and future MST-related claims, including incorporation of appropriate review of MST-related claims as part of the Rapid Appeals Modernization Program (RAMP).
3. Immediately correct the records retention error in the M21-1 and ensure VBA employees are appropriately informed/trained on the correction.
4. Require VBA to revert to its previous claims processing model known as the Segmented Lanes Organizational Model.
  - a. We recommend as part of the transition to this model that you immediately facilitate a national best practices summit (with mandatory attendance by all directors of VA regional offices) taught by your best performing claims processors.
5. Create an additional level of review such as those found with complex claims similar to the traumatic brain injury model.
6. Review the impact of quotas, timeliness standards, or other standards on the outcomes of MST-related claims.
7. Establish practices that empower MST coordinators and VSRs to take the initiative and contact veterans to ensure they are aware of the evidence needed to prove their claim, rather than rely on supervisors to accomplish this important outreach.
8. Provide additional training for call centers to further assist veterans pursuing MST-related disability claims.
9. Consider an immediate VBA-wide stand-down to review practices and outcomes at each of VBA's Regional Offices.
10. Provide the Committees on Veterans' Affairs the same information provided to the OIG as agreed to in the August 21st OIG report.
11. Evaluate and develop a plan to improve VBA's TEMs module to ensure effective adjudication of MST-related claims.
12. Enter all necessary agreements with DoD to ensure compliance with the information sharing requirement found in the FY2012 NDAA intended to improve transition to health care and treatment by the VA.<sup>8</sup>

Your actions as Under Secretary of Defense and your public recognition of the changing needs of veterans give us confidence that you will act swiftly to resolve the high rate of denied MST claims and ensure each claim is accurately adjudicated. We remain ready to assist you in resolving this issue.

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<sup>8</sup> National Defense Authorization Act for Fiscal Year 2012, Pub. L. No. 112-81 § 596€

Thank you for consideration of our request.

Sincerely,

**ANN McLANE KUSTER**  
Member of Congress

**JACKIE WALORSKI**  
Member of Congress

**ELIZABETH ESTY**  
Member of Congress

**DON YOUNG**  
Member of Congress

**JACKIE SPEIER**  
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**MIA LOVE**  
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