STATEMENT OF
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BEFORE THE
SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS
COMMITTEE ON VETERANS’ AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
ON
THE NEXUS BETWEEN ENGAGED IN COMBAT WITH THE ENEMY AND PTSD IN
AN ERA OF CHANGING WARFARE TACTICS

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Mr. Chairman and Members of the Subcommittee:

Thank you for this opportunity to present The American Legion’s views on “The Nexus between Engaged in Combat with the Enemy and post-traumatic stress disorder (PTSD) in an Era of Changing Warfare Tactics.” The progression of modern warfare through the end of the 20th Century and the beginning of the 21st Century has seen fundamental changes in how we must view the battlefield. We must give recognition to the unique exigencies of the modern battlefield. As we examine the modern day state of war fighting, it becomes clear that old models of clear cut boundaries have given way to non-linear battlefields, where simply defined lines of battle are no longer present. In recognition of this state of asymmetrical warfare, we must look at assumptions of how combat operations are defined and recorded by the nation’s military. The American Legion commends the Subcommittee for holding a hearing to discuss this extremely important and topical issue.

Combat veterans have a huge advantage when attempting to establish service-connection for PTSD or other medical conditions incurred or aggravated in combat. Claims for service-connection of a combat-related condition receive special treatment under law and regulation administered by Department of Veterans Affairs (VA). They receive favorable treatment because war is, and has always been, a chaotic endeavor. It can be difficult to record every detail of operations in the heat of battle. There are so many unrecorded nuances to the activity of military forces that Congress has specifically directed that the special circumstance of combat merit special circumstances in the establishment of incidents during military service in the conditions of war. Therefore, if a combat veteran states that he or she suffered a disease, injury, or stressor event during combat, VA must generally accept that statement as fact. This is true even if there are no service records that support the statement.
Specifically, Section 1154(b) of title 38, United States Code (USC), provides:

In the case of any veteran who engaged in combat with the enemy in active service with a military, naval, or air organization of the United States during a period of war, campaign, or expedition, the Secretary shall accept as sufficient proof of service-connection of any disease or injury alleged to have been incurred in or aggravated by such service satisfactory lay or other evidence of service incurrence or aggravation of such injury or disease, if consistent with the circumstances, conditions, or hardships of such service, notwithstanding the fact that there is no official record of such incurrence or aggravation in such service, and, to that end, shall resolve every reasonable doubt in favor of the veteran. Service-connection of such injury or disease may be rebutted by clear and convincing evidence to the contrary. The reasons for granting or denying service-connection in each case shall be recorded in full.

As a point of clarification, the special provisions in Section 1154(b) lower the burden on the veteran to show that the injury, disease or event during service, which the veteran claims led to the current medical condition, in fact happened. Section 1154(b) does not, however, remove the need to prove the other two requirements for service-connection: medical evidence of current disability and medical evidence of a relationship between the current medical condition and the in-service precipitating injury, disease or event. Medical evidence, not lay evidence, is nearly always needed to satisfy those two requirements for a grant of service-connection. For example, if a combat veteran seeking service-connection for a shoulder disability states that “he landed with great force on the shoulder after being knocked to the ground by a shell blast,” then under Section 1154(b), his statement is likely to be sufficient proof that the incident happened. For service-connection to be granted, however, the veteran will also need to present medical evidence of a current shoulder disability and medical evidence of an etiological link between the current shoulder problem and the combat injury. Section 1154(b) does not help the veteran meet those two requirements. It should also be noted that the relaxed evidentiary standards in Section 1154(b) only apply to incidents that are combat-related. They do not apply to veterans who did not engage in combat and they do not apply when combat veterans are trying to prove the occurrence of noncombat incidents.

Unfortunately for many veterans, the most difficult burden is establishing themselves as a combat veteran in order to benefit from the advantages afforded by statute. In order to determine whether VA is required to accept a particular veteran's "satisfactory lay or other evidence" as sufficient proof of service incurrence under Section 1154(b), an initial determination must be made as to whether the veteran "engaged in combat with the enemy." The United States Court of Appeals for Veterans Claims (CAVC) has held that this determination is not governed by the specific evidentiary standards and procedures in section 1154(b), which only apply once combat service has been established. See Cohen v. Brown, 10 Vet. App. 128, 146 (1997).

The Veterans Benefits Administration’s (VBA) Adjudication Procedures Manual M21-1MR PART III, SUBPART 4, CHAPTER 4, Section H, Par., 29b states that “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” (emphasis added). In Sizemore v. Principi, 18 Vet. App. 264, 272 (2004), the CAVC concluded that a determination whether a veteran was in combat must be made on a case-by-case basis, and the definition of “engaged in combat with the enemy,” as used in Section 1154(b) of title 38, USC, requires that the veteran has "personally participated in events constituting an actual fight or encounter with a military foe or hostile unit or instrumentality."

Unless a veteran was wounded or received a specific combat decoration or badge (such as the Combat Infantryman Badge or Combat Action Ribbon) or award for valor, it is often very difficult to establish that a veteran engaged in combat with the enemy in order to trigger the combat presumptions under Section 1154(b). Despite the various narrow, and in our opinion outdated, interpretations of combat as discussed above, we must recognize, however, that the very meaning of the term “engaged in combat with the enemy” has taken on a whole new meaning as the nature of warfare in today’s world has changed. This is especially true of service in the combat zones of Iraq and Afghanistan.

Due to the fluidity of the modern battlefield and the nature of the enemy’s tactics, there is no defined front line or rear (safe) area. It is simply a reality of today’s warfare that service members in traditional non-combat occupations and support roles are subjected to enemy attacks such as mortar fire, sniper fire, and improvised explosive devices (IED) just as their counterparts in combat arms-related occupational fields. Unfortunately, such incidents are rarely documented making it extremely difficult, if not impossible in some instances, for many veterans to verify in order to prove that they “engaged in combat with the enemy,” to the satisfaction of VA, to trigger the combat presumptions of Section 1154(b).

Service members, who received a combat-related badge or award for valor, trigger the combat-related presumptions of Section 1154(b), but a clerk riding in a Humvee, who witnessed the carnage of an IED attack on a convoy, and later develops PTSD, does not automatically trigger such a presumption. Proving that the incident happened or that clerk was involved in the incident, in order to benefit from the presumption afforded under Section 1154(b), can be extremely time consuming and difficult. In some instances, it may even be impossible to submit official documentation or records of the incident because such records do not exist. A good example of this is a soldier stationed in the Green Zone in Iraq who falls and injures his or her knee while running for cover during a mortar attack and later develops a chronic knee condition, but never received treatment after the initial injury. Since the soldier didn’t think he or she was hurt that bad and never sought treatment for the knee, the only proof the soldier has to offer that he or she injured his or her knee during an enemy attack on his or her base is his or her word. Since the soldier was stationed in a “safe” area and did not receive a combat decoration or award or participate in any combat operations, establishing that he or she “engaged in combat with the enemy” in order to satisfy the current narrow interpretation of the phrase just to trigger the provisions of Section 1154(b) will be extremely difficult, if not impossible. Adding to this already difficult burden is the VA General Counsel decision ruling that “the absence from a veteran’s service records of any ordinary indicators of combat service may, in appropriate cases, support a reasonable inference that the veteran did not engage in combat.” This means that, according to the General Counsel, records supporting such an inference may be considered as
negative evidence even though they do not affirmatively show that the veteran did not engage in combat. See VAOPGCPREC 12-99, dated October 18, 1999.

In addressing the definition of “engaged in combat with the enemy,” the VA General Counsel noted that the phrase is not defined by any applicable statute or regulation. In offering its interpretation, the General Counsel examined the legislative history surrounding the 1941 enactment of the provisions now provided in Section 1154(b). The General Counsel noted that there had been several bills considered in the House of Representatives that contained varying criteria for invoking the special evidentiary requirements now contained in Section 1154(b). These bills used phrases such as “in a combat area” (H.R. 4737, 77th Cong., 1st Sess. 1941; H.R. 2652, 77th Cong., 1st Sess. 1941) and “within the zone of advance” (H.R. 1587, 77th Cong., 1st Sess. 1941; H.R. 9953, 76th Cong., 3rd Sess. 1940). Language addressing veterans who were subjected to “arduous conditions of military or naval service” in a war, campaign, or expedition was also used (H.R. 6450, 76th Cong., 3rd Sess. 1940). The General Counsel surmised that, in light of these various proposed standards, Congress’ choice of the language “engaged in combat with the enemy” must be “viewed as purposeful.”

The General Counsel concluded that, “[c]onsistent with the ordinary meaning of that phrase, therefore, section 1154(b) requires that the veteran have actually participated in combat with the enemy and would not apply to veterans who served in a general “combat area” or “combat zone” but did not themselves engage in combat with the enemy.” See VAOPGCPREC 12-99, dated October 18, 1999. It is important to point out that even if VA’s view of Congress’ intent in 1941 is correct, today’s battles, as has been emphasized throughout this statement, no longer take place on a linear battlefield. Defined lines of battle are no longer present and “general” combat areas or combat zones no longer exist. Therefore, it is essential that a statute based in a 1940s reality of combat adapt to the realities of combat in the 21st Century.

Given the evolving nature of modern warfare, as reflected in the enemy’s unconventional tactics on today’s battlefields, and the outdated and overly restrictive interpretations of combat by both the courts and VA, it not only makes sense to clarify the definition of “engaged in combat with the enemy” under Section 1154(b) in a manner consistent with the new realities of modern warfare, it is essential that we do so, not just for those serving now, but for those who have served in the past and those who will serve in the future. Such a clarification would also benefit the VA by negating extensive development, and in some cases overdevelopment, of the combat-related stressor verification portion of a PTSD claim or the incident in service requirement of claims for other combat-related conditions and, in doing so, reduce the length of time it takes to adjudicate such claims. To this end, Congress must examine the manner in which combat is defined for the purposes of the statute. It is not a matter of drastically changing the existing law or creating a new benefit, but simply clarifying how it must be construed. Under the provisions of Section 1154(b) soldiers, sailors and airmen are still required to detail alleged incidents. The only question that arises is when do the provisions of this subsection apply and how is combat to be judged on this modern, non-linear battlefield?

The American Legion is well aware that these alleged incidents must still be consistent with the conditions and actions of a combat situation, indeed that combat or combat conditions must be alleged. Furthermore, we are aware that simply accepting the occurrence of these occurrences in
combat is not a magic wand to grant service-connection for any condition, as a veteran must still show evidence of a present condition and of a medical linkage between the incident and present condition.

Mr. Chairman, The American Legion reinforces the belief that we as a nation must reexamine how we view many aspects of war and war fighting. While many things have changed, there are and will always be some consistencies. This nation has a long tradition of extending its hand to those who have sacrificed to protect and serve. We have never, nor should we ever, veered from the promises to “…care for him who shall have borne the battle and for his widow and his orphan…” as was ably stated by President Abraham Lincoln.

It is our hope that the information we have presented on what is at issue here will provide some insight into this challenging topic. The American Legion stands ready to assist this Subcommittee and VA in the examination of the criteria which must be met to trigger the provisions of Section 1154(b) of title 38, USC. Thank you again for this opportunity to provide testimony on behalf of the members of The American Legion.