The American Legion recognizes the obstacles faced by victims of Military Sexual Trauma (MST) when filing for service connection in the disability benefits system. The lack of data in the military records system is a great obstacle to veterans trying to prove service connection. In this way, victims of MST filing for PTSD face very similar obstacles to combat veterans filing for PTSD, in both cases the lack of records is one of the biggest obstacles to obtaining service connection.

In 2010 VA voluntarily fixed their regulations to make it easier for veterans who had served in combat zones to obtain service connection for PTSD related to combat and combat conditions, by relaxing evidentiary requirements for veterans with a diagnosis of PTSD related to combat.

The American Legion believes VA must use its authority to change their regulations in a similar fashion for MST victims seeking service connection for PTSD. Despite the existence of regulations for MST victims that require VA to pay special attention to alternate sources of information which could confirm the occurrence of an event in service, VA adjudicators are inconsistent in applying that special consideration. Therefore, a more substantial regulatory change, on the level of what was done in 2010 for combat victims, is in order to provide justice for MST victims seeking service connection for PTSD.
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  
“INVISIBLE WOUNDS: EXAMINING THE DISABILITY AND COMPENSATION BENEFITS PROCESS FOR VICTIMS OF MILITARY SEXUAL TRAUMA” 
JULY 18, 2012

Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to provide testimony on behalf of The American Legion regarding the obstacles faced by veterans applying for compensation benefits related to military sexual trauma. Disability compensation is, in its most basic sense, based on the residual effects of injury or disease incurred in service. There are many potential residual effects resulting from sexual trauma incurred in the military, ranging from disorders of the genitourinary system to sexually transmitted diseases to Posttraumatic Stress Disorder (PTSD). As with any service connected disability, in order to establish service connection, a veteran must prove three points of fact in conjunction with the disorder. A veteran must prove there is a current condition. A veteran must establish evidence showing the occurrence of the event or disease during their period of service. Finally a medical opinion from a doctor is required, providing a nexus between the event in service and the present condition.

For victims of Military Sexual Trauma (MST) the most difficult point to prove is usually the occurrence of the event in service. There are a variety of reasons for this difficulty. Some of these reasons are institutional or even societal. Some of these reasons revolve around the circumstances and culture often associated with the triggering incidences.

The VA is clearly aware of the difficulties the victims of MST face in conjunction with the claims process. In 2004 a document produced by the Veterans Health Initiative (VHI) on MST recognized some of the challenges and offered advice to VA health care providers regarding patients of theirs who might be seeking service connection and compensation for residual effects of MST incurred in service.

The guide recognizes some of the “downsides” veterans might face filing a claim. Veterans will be forced to undergo detailed descriptions of the horrifying events which have resulted in their present PTSD symptoms. Many veterans attach symbolic value to receiving service connection and could be further traumatized by repeated rejections and denials. Citing a 1995 Armed Forces Sexual Harassment Survey which stated “59 percent of women filing rape charges while they were in service said they were not taken seriously.” The guide worries that “For sexually traumatized veterans whose attempts for redress in the military were disbelieved, minimized or
even punished, denial of service-connection [sic] may represent a re-enactment of earlier ‘betrayals’

Further complicating the process is that in many cases there may be no records which could verify a veteran’s claim of assault or sexual trauma in service. As mentioned above, some long standing patterns which are now changing slowly in the military created a negative environment for victims to file charges of rape or assault in the service. When such a culture existed, many chose not to even file due to the arduous task ahead where the victim was as much on trial as the attacker, if not more so.

Even new military programs developed to help victims deal with sexual trauma in the military are often based on anonymity, to assuage concerns of victims who feel their reporting of the incident may adversely impact their career. While this may actually be increasing the number of victims who receive needed help, and is important, it can be disastrous in a long term sense for veterans who file claims for disability related to these assaults, as there are no records to link specifically to them in service.

The lack of available data is noted in 38 CFR § 3.304(f)(5) which clearly recognizes the frequent absence of concrete information in the military record to indicate the occurrence of such traumatic events and notes in the adjudication of posttraumatic stress disorder claims that alternate sources of information can be used to indicate the presence of such an event. Recognizing the importance of types of evidence such as behavior changes, deterioration in work performance, substance abuse, episodes of depression, unexplained economic or social behavior changes and the like, the regulations show the difficulty inherent in proving the existence of the event in question. Paradoxically, often these events must be theorized as existing in the holes left by gaps in what records are actually present.

Despite the regulatory requirement to pay special attention to these types of information, American Legion service officers frequently report that this is not how these claims are actually adjudicated in the field. Oftentimes, the special attention required is only evident once the claim reaches the Board of Veterans Appeals after many years of an arduous appeals process. Some veterans do not even see the proper deference towards these types of evidence until their claim appears before the Court of Appeals for Veterans Claims. Simply put, despite regulations which require VA to pay “special attention” to alternate sources of information, all too often veterans are told the additional information is not compelling enough to make a difference. All too often it seems, there is no special attention granted to this information.

In a statement released on July 11th of this year, VA delineated an express lane process for veterans’ claims including “Special Operations” treatment for PTSD claims associated with MST. Presumably, under this “Special Operations” treatment these MST PTSD claims will finally receive the proper deference due alternative forms of evidence, although it is entirely too early to see what impact, if any, the special treatment will have on MST PTSD claims.

Interestingly, the VA has recently tackled the difficult issue of adjudicating claims for PTSD in cases where there was a known lack of records to corroborate a veteran’s claim. In 2010, in recognition of the frequent absence of concrete records to documented occurrences in combat zones, VA changed their regulations relating to the adjudication of PTSD claims related to
combat type stressors that occurred in combat zones. The decision to change these procedures came about after careful consideration, and involved a procedure which mandated a VA doctor’s opinion diagnosing PTSD related to a stressor consistent with the rigors and experiences of a combat zone.

Subsequent to this regulatory change, VA has seen accuracy results in PTSD claims greatly improve. This change has improved the process for adjudicating combat PTSD claims, and the veterans who served with those invisible wounds have been able to receive some measure of justice.

At the time of the regulatory change, the issue of MST claims for PTSD was raised in conjunction with the proposed changes for combat related PTSD. VA’s response at the time, noted in the July 13, 2010 Federal Register, was to cite the existence of the special rules for adjudicating these types of claims noted in 38 CFR § 3.304(f)(5) and seemed to indicate the mere presence of this special rule obviated the need for any further liberalization of regulations related to PTSD adjudication in MST cases.

The American Legion believes VA’s response in that instance needs to be revisited. There are clear parallels to the struggles of veterans fighting to be recognized with service connection for PTSD in combat situations and in situations of sexual trauma. In both cases, the trauma contributes to lasting effects which can reach into every aspect of the veteran’s life. In both cases, the reliving of the event as a necessary part of the process of service connection can be devastating and contribute to further trauma. In both cases, there is a long established understanding of the lack of available records to help validate the claim.

The recent change to the PTSD claims model for combat veterans has shown there is a remedy to the failing of the claims process where there is an absence of records. The American Legion believes this is the direction we must look to in order to solve the problems faced by victims of MST in the claims process as they seek service connection for PTSD related to their trauma. Whether this is accomplished through internal regulatory change by VA along the lines of the initiative displayed in improving the process for combat veterans, or by change of law, the important message is that the system needs to change to help these veterans.

If a victim of sexual trauma in the military is currently experiencing symptoms of PTSD related to that trauma, a doctor is fully qualified to make that assessment according to the Diagnostic and Statistical Manual of Mental Disorders (DSM) whether the currently utilized DSM-IV or the upcoming DSM-V the important factor is ensuring a diagnosis conforms to careful medical understanding. With a doctor’s detailed evaluation, and relating the PTSD to an event in service, the evidentiary requirement for MST victims could be treated in the same manner in which we treat combat veterans. If the described incident is consistent with the nature of sexual trauma and conforms to the diagnosis, the existence of the in service stressor should be conceded by VA.

The veterans in question have already been terribly victimized. Unlike combat veterans, they are unlikely to be hailed as heroes, although the courage to come forward and seek treatment is no less admirable. As a nation we must be reaching out to these veterans and telling them it is not only okay to come forward, but we have to reestablish trust with them.
It is easy to miss this critical consideration when addressing the issue of MST. These are veterans who came forward to serve their country, and their trust has been shattered. In many cases their trust in the system is nil. It is not enough to be a cold, dispassionate system to adjudicate their benefits. We owe them an attempt to restore faith and trust in the system. We owe them an attempt to show their country does not think less of them.

The system needs fixing, but it is not a complicated fix. The lessons of combat PTSD have shown us VA can make these changes on their own initiative, and The American Legion urges them to act now to do so for victims of MST.

The American Legion thanks this subcommittee for the opportunity to come before you today to express our views on this critical issue, and furthermore thanks to this subcommittee for ensuring that the victims of Military Sexual Trauma are not forgotten or allowed to fall by the wayside.