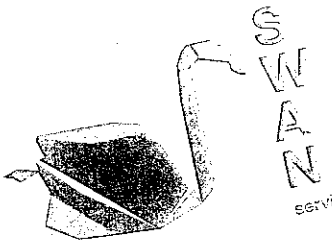

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House Committee on Veterans' Affairs
Subcommittee on Disability Assistance and Memorial Affairs Hearing:

"Invisible Wounds: Examining the Disability Compensation Benefits Process for Victims of Military Sexual Trauma"

Statement of Anu Bhagwati, Executive Director, Service Women's Action Network, Former Captain, United States Marine Corps

Dear Mr. Chairman and Members of the Committee:

Thank you for holding this hearing on a critical issue facing our veterans' community, and thank you for the opportunity to present the views of the Service Women's Action Network (SWAN) on the challenges confronting veterans who file claims for PTSD suffered as a result of sexual assault and sexual harassment in the military.

SWAN has been advocating for changes to the VA claims process for several years. We actively supported the VA's change to the claims process for combat related PTSD-claims and have provided testimony many times to both House and Senate committees on issues and challenges facing women veterans at both the VHA and VBA, and the unique challenges faced by veterans filing Military Sexual Trauma (MST) claims.

According to VA, PTSD is the most common mental health condition associated with MST. For women veterans, MST is a greater predictor of PTSD than combat.[1] Studies also indicate that sexual harassment causes the same rates of PTSD in women as combat does in men.[2] And 40 to 53% of homeless women veterans have been sexually assaulted in the military.[3] Simply put, MST has devastated the veterans' community.

The MST claims process is broken at best. VA's PTSD policy discriminates against veterans who were sexually assaulted or harassed while in uniform by holding them to a standard which is not only higher than that of other groups of veterans suffering from PTSD, but also completely unrealistic for the majority of survivors to meet. As we discovered by analyzing VA claims data (see below), the process fails the majority of survivors. The process also serves to betray and re-traumatize these veterans, often directly contributing to

[1] Maureen Murdoch, et al., "Gender Differences in Service Connection for PTSD," *Medical Care* 41, no. 8 (2003), 950-961.

[2] Maureen Murdoch, et al., "The Association between In-Service Sexual Harassment and Posttraumatic Stress Disorder among Compensation-Seeking Veterans," *Military Medicine* 171, no. 2 (2006), 166-173.

[3] Erik Eckholm, "Surge Seen in Number of Homeless Veterans," The New York Times, November 8, 2007; b. Donna L. Washington, et al., "Risk Factors for Homelessness among Women Veterans," *Journal of Health Care for the Poor and Underserved* 21 (2010): 81-91.

worsening symptoms and increasing rates of suicide.

First, it should be noted that the MST PTSD claims process adversely affects all veterans, not just women. Many men suffer from the effects of sexual violence experienced while serving in the military. According to the Department of Defense, 12% of all unrestricted sexual assault reports are made by men.[4] Additionally, according to VA, 45.7% of the veterans who screened positive for MST in 2010 were men, and 39% of veterans receiving treatment for MST were men.[5]

Veterans who suffer from the debilitating effects of Military Sexual Trauma face unique challenges in obtaining disability compensation from the VA. In 2011, SWAN and the American Civil Liberties Union (ACLU) filed a Freedom of Information Request with the VA for data on MST claims. The data obtained through litigation showed that during FY 2008, 2009 and 2010, only 32.3% of MST-based PTSD claims were approved by VBA compared to an approval rate of 54.2% of all other PTSD claims during that time.[6] As a point of comparison, data obtained by Veterans for Common Sense indicates that 53% of Iraq and Afghanistan deployment related PTSD claims through October 2011 were approved.[7]

Looking more deeply at the MST data, SWAN discovered that among veterans who had their MST-PTSD claims approved by VA, women were more likely to receive a 10% to 30% disability rating, whereas men were more likely to receive a 70% to 100% disability rating.[8]

We drew several important conclusions from these findings. First, under current VA policy, veterans who file a PSTD claim based on their Military Sexual Trauma have only a 1 in 3 chance of getting their claim approved. Also, among women veterans with MST-related PTSD, data suggests a strong gender bias in disability ratings in favor of men.

When we look at VA's PTSD claims policies on paper, we shouldn't be surprised that so few MST PTSD claims get approved: the evidentiary standard for claims based on rape, sexual assault or sexual harassment is higher, and completely unrealistic.

The language in the regulation that establishes the required evidence for what the VA calls a "in-service personal assault" (*38 CFR 3.304, Chapter 1, Part 3, Subpart A*) differs radically from the language used to describe the evidence required for combat, deployment, prisoners of war, and all other PTSD claims. In fact, Paragraph (f) allows for lay testimony as acceptable evidence in all other PTSD cases except in cases of an in-service personal assault.

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[4] Department of Defense, SAPRO. 2012. "Fiscal Year 2011 Annual Report on Sexual Assault in the Military".

[5] Department of Veterans Affairs, Office of Mental Health Services. 2011. "Summary of Military Sexual Trauma-related Outpatient Care Report, FY 2010." Washington, D.C.: Department of Veterans Affairs, Office of Mental Health Services.

[6] In conjunction with the ACLU, SWAN filed a Freedom of Information Act (FOIA) request to obtain data concerning approval/rejection rates of MST-based PTSD disability claims. Based on data analyzed for fiscal years 2008-2010, 32.3% of MST-based PTSD claims were approved vs. 54.2% of all other PTSD claims over the same period.

[7] Veterans for Common Sense. 2012. "Iraq and Afghanistan Impact Report". Washington D.C.: Available at http://veteransforcommonsense.org/wp-content/uploads/2012/01/VCS_IAIR_JAN_2012.pdf.

[8] In conjunction with the ACLU, SWAN filed a Freedom of Information Act (FOIA) request to obtain data concerning gender differences in compensation awarded for MST-related PTSD claims. The data showed men are more likely than women to receive 70% to 100% ratings for MST-related PTSD claims, and women were more likely to receive 10% to 30% ratings ($p<.001$).

Instead the regulation lists a litany of other hypothetical evidence which can be submitted by a veteran ranging from police reports, statements by family members, pregnancy and tests for sexually transmitted diseases. The regulation also allows for negative changes in behavior to be taken into consideration. It is worth noting that the regulation does require VA claims officers to accept such evidence, it only allows for the veteran to submit it.[9]

If 2 out of 3 MST claimants still cannot meet this PTSD evidentiary burden, the policy can hardly be called generous. VA policy fails veterans for a variety of reasons. First, sexual assault and sexual harassment in the military are notoriously under-reported. According to the Pentagon's Sexual Assault Prevention and Response Office (SAPRO), 86.5% of sexual assaults go unreported,[10] meaning that official documentation of an assault rarely exists. Secondly, prior to the new evidence retention laws passed in the 2011 National Defense Authorization Act, the services routinely destroyed all evidence and investigation records in sexual assault cases after 2 to 5 years, leaving gaping holes in MST claims filed prior to 2012. Lastly, the evidentiary standard described in the regulation does not take into consideration the reality that many victims do not report the incident(s) to anyone, including family members, for a variety of legitimate reasons, including shame, stigma, embarrassment, or disorientation associated with sexual trauma. Although sexual assault increases the chance of adverse emotional responses and behaviors,[11] it does not mean that all MST claimants will experience these symptoms. In fact, SWAN has spoken to many assault survivors who demonstrate changes in behavior that are not included in the regulation, such as improved job performance as a means of coping with the trauma.

In the MST community, the failures of the VA claims process are notorious. SWAN has spoken with veterans who suffer PTSD related to both MST and combat—what veterans cynically call the "double whammy". These veterans chose to abandon their MST claims and submit a claim only for combat related PTSD, as they felt their combat claim was more likely to be approved, and that the uphill battle to file an MST claim wasn't worth the agony.

SWAN has presented our data to VA Secretary General Eric Shinseki and to General Allison Hickey, the Under Secretary for Benefits at VBA, to demand change to VA policy on MST claims. After a series of conversations SWAN had with VBA about its discriminatory practices, the Under Secretary issued a memo in June 2011 providing further guidance to claims officers and instituting training requirements for processing MST claims. However, examination of both the letter and the training revealed it simply reinforced the existing regulation which our data shows is not working. Rather than resolve the problem by easing the double standard placed on MST claimants, the VBA has done nothing but reinforce failure.

To fix MST claims policy, VBA must immediately revise the regulation (*38 CFR 3.304, Chapter 1, Part 3, Subpart A*) to provide language that establishes the same evidentiary requirements for MST-based PTSD claims that it does for other claims. Specifically, if the evidence establishes a diagnosis of PTSD during service and the veterans' mental health provider connects that claimed stressor to the patient's service, then 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 should sufficiently establish the occurrence of the claimed in-service stressor.

Furthermore, there should be absolutely no requirement that veterans filing MST claims go through an

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[9] 38 C.F.R. § 3.304: Pensions, Bonuses, and Veterans' Relief. (2012).: Available at: http://edocket.access.gpo.gov/cfr_2012/julqtr/pdf/38cfr3.304.pdf

[10] Department of Defense. SAPRO, 2012.

[11] Dean G. Kilpatrick, Ph.D. 2000. "The Mental Health Impact of Rape". National Violence Against Women Prevention Research Center, Medical University of South Carolina. Available at: http://www.musc.edu/vawprevention/research/mentalimpact.shtml.

independent Compensation and Pension exam to verify that they have PTSD. We know from talking to countless veterans that these exams often unfairly reverse the diagnosis that was made by qualified VA MST counselors or other mental health providers. C & P exams are terrifying for veterans who have been assaulted or harassed as it forces them to talk about traumatic and devastating experiences with complete strangers. These experiences often taken years or even decades for veterans to come to grips with, or to talk comfortably about, and veterans should not be forced to repeat them to complete strangers who often lack the sensitivity or professional qualifications to speak to survivors of sexual trauma. The trust that is built between a MST counselor or mental health provider and his/her patient is one that cannot be replaced by strangers. VBA must trust the expertise of VHA or other sexual trauma experts who have worked intimately with their patients.

Additionally, to sensitize claim reviewers to the needs of assault and harassment victims, the VA should implement the recommendations of the Institute of Medicine Committee on Veterans' Compensation to collect gender-specific data on MST claim decisions, develop additional MST-related reference materials for raters, and incorporate training and testing on MST claims into its rater certification program.[12] The agency should also establish a presumption of soundness for the diagnoses of its own treating physicians and counselors; claim reviewers should not have the authority to second-guess evaluations by agency medical professionals or to discount VA treatment records in favor of one-time Compensation and Pension (C&P) exam results.

Finally, SWAN proposes revising the current VA work credit system, which paradoxically prolongs the adjudication process by privileging speed over accuracy in initial claim determinations. By measuring employee productivity strictly by number of cases processed, the VA offers reviewers an incentive to take any shortcut necessary to clear their desks of pending claims. The resulting combination of too much work and too little time ultimately gives rise to premature—and inaccurate—determinations, setting in motion years of appeals. In order to encourage accurate determinations at the Regional Office level and remove the incentive to recycle claims, the agency should award work credit only after the final stage of review.

Thank you very much for your attention. I would be happy to answer any questions.

[12] Committee on Veterans' Compensation for Posttraumatic Stress Disorder, Institute of Medicine and National Research Council of the National Academies, *PTSD Compensation and Military Service* (Washington DC: The National Academies Press, 2007).