

DEPARTMENT OF VETERANS AFFAIRS 38 CFR Part 3 RIN 2900-AN04

Posttraumatic Stress Disorder

AGENCY: Department of Veterans Affairs.

ACTION: Interim final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending its adjudication regulations regarding service connection for posttraumatic stress disorder (PTSD) by eliminating the requirement of evidence corroborating occurrence of the claimed in-service stressor in claims in which PTSD is diagnosed in service. This amendment is necessary to facilitate the proof of service connection in such claims. By this amendment, we intend to reduce claim-processing time for such claims.

DATES: Effective Date: This interim final rule is effective October 29, 2008. Comments must be received by VA on or before November 28, 2008.

Applicability Date: VA will apply this interim final rule to claims pending before VA on the effective date of this rule, as well as to claims filed after that date.

ADDRESSES: Written comments may be submitted through www.Regulations.gov; by mail or hand-delivery to the Director, Regulations Management (02REG), Office of the General Counsel, Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; or by fax to (202) 273-9026. Comments should indicate that they are submitted in response to "RIN 2900-AN04--Posttraumatic Stress Disorder." Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays). Please call (202) 461-4902 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at www.Regulations.gov.

FOR FURTHER INFORMATION CONTACT: Maya Ferrandino, Regulations Staff (211D), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (727) 319-5847. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Secretary of Veterans Affairs has the authority to prescribe regulations governing the nature and extent of proof and evidence required to establish entitlement to benefits. 38 U.S.C.501 (a)(1). Under 38 CFR 3.303(a), one of the ways that service connection of a disability may be established is by affirmatively showing inception or aggravation during service of a disease or injury that resulted in that disability. However, in order to establish service connection for PTSD in cases in which a veteran did not engage in combat with the enemy or was not a prisoner of war, current 38 CFR 3.304(f) requires: (1) Medical evidence diagnosing PTSD; (2) medical evidence establishing a link between a veteran's current symptoms and an in-service stressor; and (3) credible supporting evidence that the claimed in-service stressor occurred.

The longstanding requirement in Sec. 3.304(f) of credible supporting evidence that the claimed in-service stressor occurred is based on the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (1994) (DSM-IV), to which a diagnosis of a mental disorder must conform. 38 CFR 3.304(f) and 4.125(a). According to DSM-IV at 427, the first diagnostic criterion for PTSD is:

The person has been exposed to a traumatic event in which both of the following were present:

(1) The person experienced, witnessed, or was confronted with an event or events that involved actual or threatened death or serious injury, or a threat to the physical integrity of self or others

(2) The person's response involved intense fear, helplessness, or horror.

The symptoms of PTSD ``usually begin within the first 3 months after the trauma, although there may be a delay of months, or even years, before symptoms appear." DSM-IV at 426. Given the delay that may occur between the occurrence of a stressor and the onset of PTSD and the subjective nature of a person's response to an event, VA concluded, when it first promulgated Sec. 3.304(f) in 1993, that it is reasonable to require corroboration of the in-service stressor, a conclusion with which the United States Court of Appeals for the Federal Circuit agreed.

58 FR 29109 (1993); Nat'l Org. of Veterans' Advocates, Inc. v. Sec'y of Veterans Affairs, 330 F.3d 1345, 1351-52 (Fed. Cir. 2003). Also, according to DSM-IV at 424-25, a ``person commonly makes deliberate efforts to avoid thoughts, feelings, or conversations about the traumatic event * * * and to avoid activities, situations, or people who arouse recollections of it. * * * This avoidance of reminders may include amnesia for an important aspect of the traumatic event." We believed that it was reasonable for Sec. 3.304(f) to require corroboration of the occurrence of the stressor in order to substantiate aspects of the event that a veteran may not remember.

However, VA has found, based on claims submitted since September 11, 2001, that service members are increasingly being diagnosed with PTSD while still in service, rather than after discharge from service. The increased incidence of in-service diagnoses of PTSD is attributable to advances in medicine and increased monitoring of service members' mental health by the service departments. Given the ability to more quickly diagnose PTSD and the proximity between an in-service diagnosis of PTSD and the claimed occurrence of the stressor, VA no longer believes it is necessary to require evidence corroborating occurrence of the stressor in claims based on an in-service diagnosis.

We are therefore amending Sec. 3.304(f) to relax the requirements for establishing service connection for PTSD that was diagnosed in service. We are adding a new paragraph, which provides that, if the evidence shows that the veteran's PTSD was diagnosed during service and the claimed stressor is related to that service, 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. We believe that this change will contribute to faster processing of PTSD claims by eliminating the need for VA to develop evidence of occurrence of the in-service stressor in claims in which the veteran's PTSD was diagnosed during service.

For claims based on a post service diagnosis of PTSD, we will continue to require credible supporting evidence of the occurrence of the claimed in-service stressor. The U.S. Court of Appeals for Veterans Claims (CAVC) has held that VA is ``not bound to accept [the claimant's] uncorroborated account" of a stressor or a ``social worker's and psychiatrist's unsubstantiated * * * opinions that the alleged PTSD had its origins in appellant's [military service]." *Wood v. Derwinski*, 1 Vet. App. 190, 192 (1991). Further, the CAVC stated that VA ``is not required to accept doctors' opinions that are based upon the appellant's recitation of medical history." *Godfrey v. Brown*, 8 Vet. App. 113, 121 (1995). A post-service diagnosis of PTSD is often based on a claimant's personal account of a stressful event that may have occurred many years before the doctor's examination. In order to ensure a competent and credible diagnosis of PTSD, there must be corroboration of the claimed in-service stressor. This standard is the same as that generally applied by VA when a post-service diagnosis of a disability is allegedly due to an injury incurred or disease contracted during service.

Also, we are eliminating the hyphen in the term ``post-traumatic stress disorder" in Sec. 3.304(f) to reflect current

medical terminology.

Administrative Procedure Act

In accordance with 5 U.S.C. 553(b)(3)(B), the Secretary of Veterans Affairs finds that there is good cause to dispense with the opportunity for prior comment with respect to this rule, which eliminates the need for evidence to corroborate the occurrence of a stressor in claims in which a veteran was diagnosed with PTSD during service. The Secretary finds that it is impracticable, unnecessary, and contrary to the public interest to delay this regulation, which will speed up processing of PTSD claims, for the purpose of soliciting prior public comment because the regulation relieves an unnecessary proof requirement for certain veterans disabled by service-connected PTSD who need VA benefits as soon as possible to compensate for loss in wage-earning capacity. For the foregoing reasons, the Secretary of Veterans Affairs is issuing this rule as an interim final rule. The Secretary of Veterans Affairs will consider and address comments that are received within 30 days of the date this interim final rule is published in the Federal Register.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501-3521).

Regulatory Flexibility Act

The Secretary hereby certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C.601-612. This interim final rule will not affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this interim final rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Executive Order classifies a "significant regulatory action," requiring review by the Office of Management and Budget (OMB), as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The economic, interagency, budgetary, legal, and policy implications of this interim final rule have been examined, and it has been determined not to be a significant regulatory action under the Executive Order.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any year. This interim final rule would have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance Numbers and Titles The Catalog of Federal Domestic Assistance program numbers and titles for this rule are 64.109, Veterans Compensation for Service-Connected Disability and 64.110, Veterans Dependency and Indemnity Compensation for Service-Connected Death.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Radioactive materials, Veterans, Vietnam.

Approved: October 7, 2008.

Gordon H. Mansfield,

Deputy Secretary of Veterans Affairs.

For the reasons set out in the preamble, VA is amending 38 CFR part 3 as follows:

PART 3--ADJUDICATION

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. Amend Sec. 3.304(f) by:

a. Revising the paragraph heading and introductory text.

b. Redesignating paragraphs (1), (2), and (3) as paragraphs (2), (3), and (4), respectively, and by adding new paragraph (1).

c. Removing "post-traumatic" each place it appears and add, in its place, "posttraumatic".

The revisions and addition read as follows:

Sec. 3.304 Direct service connection; wartime and peacetime.

* * * * *

(f) Posttraumatic stress disorder. Service connection for posttraumatic stress disorder requires medical evidence diagnosing the condition in accordance with Sec. 4.125(a) of this chapter; a link, established by medical evidence, between current symptoms and an in-service stressor; and credible supporting evidence that the claimed in-service stressor occurred. The following provisions apply to claims for service connection of posttraumatic stress disorder diagnosed during service or based on specified in-service stressors:

(1) If the evidence establishes a diagnosis of posttraumatic stress disorder during service and the claimed stressor is related to that service, 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.

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