Military Sexual Trauma (MST)

Live Training Questions & Responses

**1. Which special issue or flash should the field use for MST claims?**

Special issues that must be assigned in MAP-D and VBMS.

The following table outlines which special issues should be assigned in MAP-D and VBMS.

# Special Issues in VBMS

|  |  |  |
| --- | --- | --- |
| Special Issues | Basis | When to Use |
| PTSD – Personal Trauma | Sexual Trauma/Assault    Personal Trauma (Non-Sexual)  Sexual Harassment | Claims for PTSD based on military sexual trauma (MST) including sexual assault Claims for PTSD resulting from a non-sexual personal trauma Claims for PTSD based on MST-related to sexual harassment |
| Non-PTSD Personal Trauma | Sexual Trauma/Assault     Personal Trauma (Non-Sexual)   Sexual Harassment | Claims for any condition, mental or physical (other than PTSD), based on MST-related to sexual trauma or assault Claims for any condition, mental or physical (other than PTSD), resulting from a non-sexual personal trauma Claims for any condition, mental or physical, based on MST-related sexual harassment |

Special Issues in MAP-D

|  |  |
| --- | --- |
| Special Issue | When to Use |
| Military Sexual Trauma (MST) *(added in March 2011)*   | Claims for any condition, mental or physical (including PTSD), resulting from MST. |

\* Please note that while MAP-D also has a special issue PTSD-Personal Trauma and Non-PTSD Personal Trauma, they are not listed here because these special issues in MAP-D do not encompass MST as they do in VBMS.

**2. For the purposes of corroboration, can the field request service records or other federal agency records of a Veteran identified as the perpetrator?**

Yes. Under the authority of the Privacy Act of 1974,[[1]](#footnote-1) VA employees may request service records and/or federal records from other agencies whenever such information is needed to adjudicate a claim for benefits. VBA’s Privacy Officer and VA’s Office of General Counsel have confirmed that this practice falls within the guidelines of the Privacy Act. Further guidance clarifying how to maintain this evidence is forthcoming.

**3. For the purposes of corroboration, can the field review CAPRI records of a Veteran identified as the perpetrator, or a buddy whose records may contain information about the event?**

Yes. Under the authority of the Privacy Act of 1974, VA employees may access CAPRI records for someone identified as the perpetrator or a buddy when the information is needed to adjudicate a claim for benefits. VBA’s Privacy Officer and VA’s Office of General Counsel have confirmed that this practice falls within the guidelines of the Privacy Act. Further guidance clarifying how to maintain this evidence is forthcoming.

**4. The Manual indicates that a memorandum of unavailability should only be used in conjunction with PTSD claims involving combat, but what about PTSD claims for MST?**

There are two different memos relating to VA not having enough information or not receiving information during the development of a claim.

The first is referred to as a Formal Finding of Record Unavailability, or an Unavailability Memo, and its use is outlined in M21-1MR III.iii.2.I.59. This memo is used when VA has made a request for federal records and received a negative response to our request. If federal records have been requested and a negative response received while developing claims based on MST, this memo would be required for documentation purposes.

After all development has been completed as outlined in M21-1,IV,ii.1.D.5 and if the stressor or markers do not provide enough evidence to request an examination then follow M21-1,IV.ii.1.D.4.a. Action by the JSRRC Coordinator When a Claimed In-Service Stressor Cannot Be Corroborated

When a claimed in-service stressor cannot be corroborated, the JSRRC Coordinator will make a formal finding regarding the lack of sufficient information in the claims folder to document the occurrence of the stressful event(s) and the Veteran’s involvement in it.

To ensure that the information of record is insufficient, the JSRRC Coordinator should review the claims folder to confirm that

* the claimant was properly notified of the information required to document the stressor(s), and
* all relevant evidence, to include service records, has been considered in an attempt to confirm the occurrence of the stressful event.

***Important:*** The determination that a claimed in-service stressor cannot be corroborated is to be made based on the objective evidence of record and not the JSRRC Coordinator's own personal feelings about the believability of the stressor

**5. Can service-connection for MST/PTSD be granted for an assault that happens during inactive duty for training?**

Yes. The Office of General Counsel (OGC) provided an opinion in 2001 that addressed this topic specifically. In the opinion linked below, OGC stated that PTSD resulting from sexual assault, which occurred during inactive duty for training may be considered a disability caused by an injury.

<http://vbaw.vba.va.gov/bl/21/advisory/PRECOP/DADS/01dad/DAD08_01.doc>

**6. How are prenatal and mental health records requested?**

Prenatal records are stored in a Veteran's Inpatient Treatment Record (ITR).  We typically refer to this type of record as a clinical record.  To request clinical records, a PIES request must be initiated, using the C01 request.  To submit the request, you must include that you are looking for prenatal records (referred to as "allegation" in the PIES request), the approximate dates of the records, and the name (or number, if known) of the Military Treatment Facility (MTF).  Please see M21-1 III.iii.2.D.3.a.

If the pregnancy has taken place more recently, it is possible that the ITR has not yet been archived to the National Personnel Records Center (NPRC).  In these cases, a request for the record should be sent directly to the facility where treatment was provided.

In-service mental health treatment records are not included in a Veteran's Service Treatment Records (STRs) and must be requested directly from the providing facility.  It must be noted that mental health treatment records are typically destroyed five years after the end of the year in which the case is closed.

For more information on

* developing for service department records of in-service mental health treatment, see M21-1, Part IV, Subpart ii, 1.D.2.b.
* submitting a Personnel Information Exchange System (PIES) request, see
* M21-1, Part III, Subpart iii, 2.D
* the PIES User Guide, and

obtaining inpatient clinical records, see

•M21-1, Part III, Subpart iii, 2.A.2, and

•M21-1, Part III, Subpart iii, 2.B.3.d.

**7. What if diagnosis is for other mental health disability and not PTSD?**

If a Veteran claims a mental health condition other than PTSD, or is diagnosed with a non-PTSD condition as a result of an MST event, service-connection for this condition must be considered under section 3.303, which provides the basic principles of service connection. The relaxed evidentiary standards, allowing the use of markers to warrant a VA exam that are outlined in 38 C.F.R. § 3.304(f)(5), apply only to PTSD claims based on in-service personal assault. When the medical evidence in the claim, to include a VA exam, results in a diagnosis other than PTSD, we are not authorized to service-connect the non-PTSD disability. In this case, the general guidelines under 38 C.F.R. § 3.303 must be followed, requiring evidence of an event in service, not credible evidence of an in-service stressor.

Under the current regulations, when non-PTSD mental disorders are claimed or diagnosed, no provision exists for establishing occurrence of MST while in service based only on a marker and an examiner’s acceptance of the Veteran’s lay statement of the event. Generally, all non-PTSD conditions may be connected to service if there is in-service documentation of the condition – or proof of the event – and a medical nexus connecting the current diagnosis and the in-service condition/event. These cases will generally have gone through the VHA exam process because a marker was found, not because credible evidence established the occurrence of in-service MST. Therefore, the examiner’s opinion regarding the Veteran’s credibility cannot be used to establish occurrence of the MST, which is now an event under section 3.303.

1. 5 U.S.C. § 552a, et seq. [↑](#footnote-ref-1)