

VA's Duty to Assist in the Context of PTSD Stressor Verification: What Must VA Do to Fulfill the Veterans Claims Assistance Act of 2000?

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INTRODUCTION

This article will explore the obligation of the Department of Veterans Affairs (VA) to research and verify claimed non-combat related stressors and combat service in relation to service connection claims for post-traumatic stress disorder (PTSD), and in light of VA's duty to assist under the Veterans Claims Assistance Act of 2000 (VCAA).² Under the VCAA, VA is obligated to make reasonable efforts to assist a claimant in obtaining evidence necessary to substantiate his or her claim, and this duty includes obtaining pertinent service records identified by the veteran that would help substantiate the claim.³ In particular, this article will examine the threshold established by the VCAA and pertinent case law regarding the nature and extent of VA's duty to assist a claimant in verifying his or her combat service or non-combat related in-service stressors.

Part I addresses the background and provisions of the VCAA. Part II discusses PTSD and the burden to verify stressors. Part III outlines the current process of stressor verification and verification of combat service, as well as the logistical challenges that exist in searching military records to verify stressors or combat service. Finally, Part IV offers a proposed course of action to simplify the stressor verification process and to make the process more consistent and uniform, which will also enhance VA's fulfillment of its statutory duty to assist a veteran in the development of his or her service connection claim for PTSD.

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² 38 U.S.C. §§ 5102-5103A, 5107 (2000).

³ *Id.* § 5103A.

I. VCAA – BACKGROUND AND PROVISIONS

In November 2000, the Veterans Claims Assistance Act, otherwise known as the “VCAA,” came into effect.⁴ Designed to codify VA’s long-standing practice of assisting veterans in developing their claims for benefits,⁵ Congress promulgated this statute in direct response to the decision by the United States Court of Appeals for Veterans Claims (CAVC) in *Morton v. West*.⁶ In that decision, the CAVC determined, based on the statute’s plain language and structure, that the then-existent 38 U.S.C. § 5107 (1999)⁷ did not require VA to assist veterans in developing their claims for VA benefits unless and until a claimant presented a “well-grounded” claim.⁸ Thus, at that time, in order to trigger VA’s duty to assist a claimant in the development of the factual record in support of his or her claim, the initial burden fell upon the claimant to present evidence suggesting that the claim was “plausible.”⁹ Accordingly, prior to the VCAA, claimants “who have met the requisite burden, and only those [claimants], [were] entitled to the benefit of VA’s duty to assist.”¹⁰

⁴ *Id.* §§ 5102-5103A, 5107.

⁵ *See* 38 C.F.R. §§ 3.102, 3.159 (1999); 106 CONG. REC. S9211-12 (daily ed. Sept. 25, 2000) (remarks of Sen. Specter); *see also* *Duenas v. Principi*, 18 Vet. App. 512, 515 (2004) (recognizing that “[e]ven prior to the enactment of the Veterans Claims Assistance Act of 2000 . . . VA had a duty to assist claimants ‘in developing the facts pertinent to a claim’” so long as a claimant submitted a well-grounded claim) (citing 38 U.S.C. § 5107(a) (1994)).

⁶ 12 Vet. App. 477 (1999); *see* 106 CONG. REC. S9211, S9212 (Sept. 25, 2000) (remarks of Sen. Specter); 106 CONG. REC. H6786-87 (daily ed. Jul. 25, 2000) (remarks of Rep. Evans) (“This legislation became necessary as a result of the ruling of the U.S. Court of Appeals for veterans benefits in *Morton v. West*.”); *see also* *Duenas*, 18 Vet. App. at 516.

⁷ *Morton*, 12 Vet. App. at 480 (indicating that as of 1999, 38 U.S.C. § 5107 provided “a person who submits a claim for benefits under a law administered by the Secretary shall have the burden of submitting evidence sufficient to justify a belief by a fair and impartial individual that the claim is well grounded. The Secretary shall assist such a claimant in developing the facts pertinent to the claim.”) (emphasis omitted).

⁸ *Id.* at 480, 486 (examining precedent, statutory language, structure and purpose and concluding that “absent the submission and establishment of a well-grounded claim, the Secretary cannot undertake to assist a veteran in developing facts pertinent to his or her claim.”).

⁹ *Id.* at 480 (holding that “[s]ection 5107(a) of title 38 unequivocally places an initial burden on a claimant to produce evidence that the claim is well grounded or, as we have held, is plausible.”).

¹⁰ *Id.* (emphasis added).

The CAVC in *Morton* determined that imposing such a condition precedent to VA's duty to assist "reflects a policy that implausible claims should not consume the limited resources of VA and force into even greater backlog and delay those claims which – as well grounded – require adjudication."¹¹ Thus, because 38 U.S.C. § 5107 imposed a "duty to avoid adjudicating implausible claims at the expense of delaying well-grounded ones,"¹² the CAVC drew a distinction between veteran-claimants who were statutorily worthy of VA's assistance and those who were not.¹³ At the same time, however, the CAVC in *Morton* noted that:

Congress, of course, can choose to change or eliminate the well-grounded claim requirement altogether. Indeed, it is possible that after evaluating such considerations as fairness, equity, and the personnel, facility, and financial expenditures which would be required, Congress might well opt for requiring the Secretary to assist and examine all veterans, regardless of whether well-grounded claims have been submitted.¹⁴

Congress responded to the *Morton* decision in short order.¹⁵ In 2000 legislators introduced drafts of the VCAA, and after consideration by the House and Senate Committees on Veterans' Affairs and debates on the matter, by September 2000 the House and Senate had reached a consensus as to what Congress aimed to accomplish with this new Act.¹⁶ In particular, as reflected in Senate debates, Congress sought "to reaffirm and clarify the duty of the Secretary of Veterans Affairs to assist claimants for benefits under laws administered by the Secretary"¹⁷ Senate debates revealed that "Congress has long recognized that this Nation owes

¹¹ *Id.*

¹² *Id.*

¹³ *See id.*; *Epps v. Gober*, 126 F.3d 1464, 1469 (1997) (affirming 38 U.S.C. § 5107 imposes no duty to assist a veteran-claimant unless said claimant establishes a "well-grounded" claim).

¹⁴ *Morton*, 12 Vet. App. at 485-86.

¹⁵ *See* 38 U.S.C. §§ 5103, 5103A. For comprehensive treatment of the legislative history of the VCAA, *see also* *Gordon v. Nicholson*, 21 Vet. App. 270, 285, 287-89 (2007) (Lance, J., dissenting).

¹⁶ *See* *Duenas v. Principi*, 18 Vet. App. 512, 516 (2004) (discussing the legislative history of the VCAA, which included consideration by the House and Senate Committees on Veterans' Affairs).

¹⁷ 106 CONG. REC. S9211 (daily ed. Sept. 25, 2000); *accord* *Gordon*, 21 Vet. App. at 275-76 (discussing the legislative history of the VCAA).

a special obligation to its veterans. The system to provide benefits to veterans was never intended to be adversarial or difficult for the veteran to navigate,” and legislators discussed the inequitable result of the Morton decision, which effectively required veterans “to submit records that are in the government’s possession (e.g., VA medical records, military service records, etc.).”¹⁸ Although lawmakers recognized the importance of “balanc[ing] this duty [to assist] against the futility of requiring VA to develop claims where there is no reasonable possibility that the assistance would substantiate the claim,” they asserted that “by specifying certain types of assistance for compensation claims, the bill does not limit VA’s assistance to those types of claims or to a specific type of assistance. It expressly provides that nothing in the bill prevents the Secretary from rendering whatever assistance is necessary.”¹⁹

The enactment of the VCAA in November 2000, as well as its implementing regulations, rendered mandatory VA assistance to all veteran-claimants upon submission of a claim,²⁰ and in this way, it “defined VA’s obligation to fully develop the record”²¹ It eliminated the well-grounded claim rule,²² and thus, as the CAVC has recognized, under this “new legal framework, there is generally *no prerequisite* to receiving VA assistance; VA is simply required to assist a claimant at the time that claimant files a claim for benefits.”²³

In particular, the new 38 U.S.C. § 5103A provides that “[t]he Secretary shall make reasonable efforts to assist a claimant in obtaining

¹⁸ *Id.* at S9212 (remarks of Sen. Rockefeller).

¹⁹ *Id.* at S9212-13.

²⁰ *See* 38 U.S.C. § 5103A; 38 C.F.R. §§ 3.156, 3.159 (2007); *see also* *Canlas v. Nicholson*, 21 Vet. App. 312, 316 (2007) (noting that “to the extent that our case law suggests that such a duty [to assist] is discretionary, the . . . enactment of the VCAA has now made the duty mandatory”). The VCAA has further provided an enhanced duty to notify a claimant as to the information and evidence necessary to substantiate a claim for VA benefits. 38 U.S.C. §§ 5102, 5103, 5107.

²¹ *McGee v. Peake*, 511 F.3d 1352, 1357 (Fed. Cir. 2008).

²² *E.g.*, *Paralyzed Veterans of Am. v. Sec’y of Veterans Affairs*, 345 F.3d 1334, 1338-39 (Fed. Cir. 2003) stating that the VCAA “removed the requirement of former § 5107(a) that a claimant first establish a well-grounded claim before VA was to begin providing assistance”); *Wensch v. Principi*, 15 Vet. App. 362, 367 (2001) (noting that “[a]mong other things, the VCAA . . . eliminated the well-grounded-claim requirement and modified the Secretary’s duties to notify and assist claimants.”).

²³ *Duenas*, 18 Vet. App. at 516 (emphasis added).

evidence necessary to substantiate the claimant's claim for a benefit under a law administered by the Secretary."²⁴ Such an obligation includes making "reasonable efforts to obtain relevant records (including private records) that the claimant adequately identifies to the Secretary and authorizes the Secretary to obtain,"²⁵ as well as obtaining any relevant service treatment records and "[a]ny other relevant records held by any Federal department or agency that the claimant adequately identifies and authorizes the Secretary to obtain."²⁶ In addition, VA must continue its efforts to obtain such pertinent records until "the records are obtained unless it is reasonably certain that such records do not exist or that further efforts to obtain those records would be futile."²⁷ The implementing regulation, 38 C.F.R. § 3.159, similarly provides that "VA will make as many requests as are necessary to obtain relevant records from a Federal department or agency," and will end its efforts to obtain such Federal records only if VA concludes that the records sought do not exist or that further efforts to obtain those records would be futile.²⁸ The regulation further provides that "[c]ases in which VA may conclude that no further efforts are required include those in which the Federal department or agency advises VA that the requested records do not exist or the custodian does not have them."²⁹ Accordingly, "[t]he duty to assist is *not unlimited* and the statute permits the Secretary to assert that he has been absolved from the duty" when further efforts would be fruitless.³⁰ At the same time, however, although 38 U.S.C. § 5103A expressly states that VA "is not required to provide assistance to a claimant . . . if no reasonable possibility exists that such assistance would aid in substantiating the claim,"³¹ it also

²⁴ 38 U.S.C. § 5103A(a)(1); 38 C.F.R. § 3.159(c) (outlining VA's duty to assist claimants in obtaining evidence); *accord* Forcier v. Nicholson, 19 Vet. App. 414, 421 (2006); *Loving v. Nicholson*, 19 Vet. App. 96, 102 (2005); *Duenas*, 18 Vet. App. at 516.

²⁵ 38 U.S.C. § 5103A(b)(1); 38 C.F.R. § 3.159(c) (providing that "VA will make reasonable efforts to help a claimant obtain evidence necessary to substantiate the claim."); *accord* *Canlas*, 21 Vet. App. at 316; *Moore v. Nicholson*, 21 Vet. App. 211, 213 (2007) (noting that the Secretary is "obligated to obtain all relevant records identified by the appellant").

²⁶ 38 U.S.C. § 5103A(c)(1), (3); *accord* *Loving*, 19 Vet. App. at 102.

²⁷ 38 U.S.C. § 5103A(b)(3); 38 C.F.R. § 3.159(c)(2); *accord* *Frasure v. Principi*, 18 Vet. App. 379, 391 (2004).

²⁸ 38 C.F.R. § 3.159(c)(2).

²⁹ *Id.*

³⁰ *Moore*, 21 Vet. App. 211, 213 (2007) (emphasis added).

³¹ 38 U.S.C. § 5103A(a)(2) (emphasis added); *accord* *Forcier v. Nicholson*, 19 Vet. App. 414, 421-22 (2006).

specifically provides that “[n]othing in this section shall be construed as precluding the Secretary from providing such other assistance . . . to a claimant in substantiating a claim as the Secretary considers appropriate.”³²

While the VCAA imposes a substantial duty on VA to assist the veteran-claimant in obtaining evidence in support of a claim, it also obliges the claimant to aid in this process as well.³³ That is, the claimant “must provide enough information to identify and locate the existing records including the custodian or agency holding the records; [and] the approximate time frame covered by the records”³⁴ It appears, therefore, that apart from service and personnel records in the custody of the government, which are easily located through social security numbers, service numbers, and names of the veterans, VA’s duty to acquire other records is more limited, as it is ultimately the claimant’s responsibility to provide all the information necessary to locate such other records.³⁵ In this way, the CAVC has recognized that “with the exception of SMRs [service medical records] relevant to a disability compensation claim, the Secretary’s duty to obtain other records is more limited,” and that “other than for SMRs, it is clear that it is ultimately the claimant’s responsibility to provide the information necessary to locate and secure other relevant records.”³⁶ In this regard, therefore, “[t]he duty to assist is not a license for a fishing expedition to determine if there might be some unspecified information which could possibly support a claim.”³⁷

³² 38 U.S.C. § 5103A(g); see *Frasure*, 18 Vet. App. at 391.

³³ 38 C.F.R. § 3.159(c)(3).

³⁴ *Id.*; see *Canlas*, 21 Vet. App. at 317 (recognizing that the claimant must adequately identify for VA records to be located).

³⁵ See 38 C.F.R. § 3.159(c)(2)(i); see also 38 U.S.C. § 5103A(b) (providing that VA “shall make reasonable efforts to obtain relevant records (including private records) that the claimant adequately identifies to the Secretary and authorizes the Secretary to obtain.”); 38 U.S.C. § 5107(a); *Canlas*, 21 Vet. App. at 317; *Cromer v. Nicholson*, 455 F.3d 1346, 1350 (Fed. Cir. 2006); cf. *Hyatt v. Nicholson*, 21 Vet. App. 390, 393-94 (2007), *withdrawn sub nom.* *Hyatt v. Peake*, 22 Vet. App. 211 (2008) (noting that “with the exception of SMRs [service medical records] relevant to a disability compensation claim, the Secretary’s duty to obtain other records is more limited,” and that “other than for SMRs, it is clear that it is ultimately the claimant’s responsibility to provide the information necessary to locate and secure other relevant records.”).

³⁶ *Cromer*, 455 F.3d 1346, 1350 (Fed. Cir. 2006); accord 38 U.S.C. § 5107(a).

³⁷ *Canlas*, 21 Vet. App. at 317, quoting *Gobber v. Derwinski*, 2 Vet. App. 470, 472 (1992) (internal quotation marks and emphases omitted); accord *Moore v. Nicholson*, 21 Vet. App. 211, 216 (2007).

II. PTSD

PTSD is defined as “an anxiety disorder caused by exposure to an intensely traumatic event”³⁸ This disorder is “characterized by reexperiencing the traumatic event in recurrent intrusive recollections, nightmares, or flashbacks, by avoidance of trauma-associated stimuli, by generalized numbing of emotional responsiveness, and by hyperalertness and difficulty in sleeping, remembering, or concentrating,” and “[t]he onset of symptoms may be delayed for months to years after the event.”³⁹ PTSD is unique among most of the disabilities for which VA offers compensation in that an actual disease or injury need not be sustained during military service in order for service connection to be granted. Rather, the veteran is required to have experienced a “stressor” event in service;⁴⁰ that is, a traumatic event that involves experiencing, witnessing, or confronting an event or events that involve actual or threatened death and serious injury, or encountering a threat to the physical integrity of others, and responding with intense fear, helplessness, or horror.⁴¹ Subsequently, the medical evidence must reflect a diagnosis of PTSD at any time after service and a link between the current diagnosis and the in-service stressor event, which may involve combat or non-combat events.⁴²

While the veteran need not prove that he or she incurred an in-service disease or injury, the record must nonetheless contain “credible supporting evidence” to establish the existence of the claimed stressor event.⁴³ The only exception to this requirement is if the veteran engaged in combat or was a prisoner of war, and the claimed stressor was related to that combat or captivity; in such cases, “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.”⁴⁴ Combat exposure is most frequently established

³⁸ DORLAND’S ILLUSTRATED MEDICAL DICTIONARY 550 (30th ed. 2003).

³⁹ *Id.*

⁴⁰ See 38 C.F.R. § 3.304(f) (2007).

⁴¹ AM. PSYCHIATRIC ASS’N, DIAGNOSTIC CRITERIA FROM DSM-IV 209 (1994); see also *Cohen v. Brown*, 10 Vet. App. 128, 141 (1997) (finding a more subjective standard in determining whether a stressor was sufficient to trigger PTSD; no longer “evoke significant symptoms of distress in almost everyone”) (internal quotation marks omitted).

⁴² 38 C.F.R. § 3.304(f); see *Cohen*, 10 Vet. App. at 138-42.

⁴³ *Id.*

⁴⁴ 38 C.F.R. § 3.304(f)(1), (2); see also 38 U.S.C. 1154(b) (2000).

based on the receipt of certain military decorations verified within service personnel records, and VA has recognized that “a number of citations appear to be awarded primarily or exclusively for circumstances related to combat,” including the Medal of Honor, Navy Combat Action Ribbon, Combat Infantryman’s Badge, Bronze Star Medal with “V” Device, and Distinguished Service Cross.⁴⁵ This is not to say that a determination of combat service is based solely on the award of certain citations; as the CAVC has held, “engagement in combat is not necessarily determined simply by reference to the existence or nonexistence of certain awards or MOSs [military occupational specialties].”⁴⁶ The CAVC has found “an almost unlimited field of potential evidence to be used”⁴⁷ to establish combat or stressor exposure.

The CAVC has also eased the burden on veterans by finding that personal participation in combat need not be established. In *Suozzi v. Brown*, the CAVC held that “[VA], in insisting that there be corroboration of every detail including the appellant’s personal participation in the [claimed stressor], defines ‘corroboration’ far too narrowly.”⁴⁸ In *Suozzi*, the veteran was attempting to reopen a service connection claim for PTSD which had previously been denied based on a lack of documentation of the claimed stressor.⁴⁹ To reopen his claim, the veteran submitted radio logs and morning reports that confirmed his company came under heavy enemy attack in May 1967, resulting in 56 wounded and 17 killed.⁵⁰ The Board of Veterans’ Appeals (Board) denied the veteran’s application to reopen noting that the veteran’s MOS was clerk typist, and he was not named in any of the submitted service records.⁵¹ The CAVC reversed the Board’s holding and remanded for additional consideration finding that the submitted evidence, taken as a whole, “favorably corroborates the veteran’s alleged in-service stressor.”⁵²

⁴⁵ DVA Op. Gen. Counsel Prec. 12-99 (October 18, 1999); VA ADJUDICATION PROCEDURE MANUAL M21-1MR [hereinafter M21-1MR], PART III, SUBPART IV, Ch.4, ¶ H.29.c (2008).

⁴⁶ *Dizoglio v. Brown*, 9 Vet. App. 163, 166 (1996).

⁴⁷ *Gaines v. West*, 11 Vet. App. 353, 359 (1998).

⁴⁸ 10 Vet. App. 307, 311 (1997).

⁴⁹ *Id.* at 307-08.

⁵⁰ *Id.* at 310.

⁵¹ *Id.* at 307-10.

⁵² *Id.* at 311.

More recently, the CAVC considered the claim of a veteran whose reported stressor involved coming under rocket attacks at Da Nang airbase in Vietnam.⁵³ While the Board conceded that these claimed rocket attacks had been verified by the service records obtained by VA, it denied the claim finding that the veteran had not demonstrated “he was anywhere near the targets of such attacks, or was otherwise threatened thereby.”⁵⁴ The CAVC reversed the Board’s denial finding that “the evidence implies [the veteran’s] personal exposure.”⁵⁵ It further stated:

Although the unit records do not specifically state that the veteran was present during the rocket attacks, the fact that he was stationed with a unit that was present while such attacks occurred would strongly suggest that he was, in fact, exposed to the attacks. *Suozzi* makes clear that corroboration of every detail is not required. . . . [The Board] appears to suggest that the veteran should have proven his physical proximity to, or firsthand experience with, the attacks. His presence with his unit at the time such attacks occurred corroborates his statements that he experienced such attacks personally.⁵⁶

Thus, the CAVC has established that even if a veteran did not have a combat-related MOS and did not receive a combat-related award, his or her combat-related stressor may be recognized based on credible supporting evidence. Obtaining such evidence presents another unique challenge. The CAVC has acknowledged that “[t]he chaotic circumstances of combat, however, preclude the maintenance of detailed records.”⁵⁷

Therefore, although the veteran with verified combat service has no burden to verify his or her claimed stressor (having instead only the burden to verify that he or she participated in combat), the veteran for whom combat participation is not established in the record is not so fortunate. His or her claim must have “credible supporting evidence” or face denial. Non-combat related stressors typically include, but are not limited to, exposure to or

⁵³ *Pentecost v. Principi*, 16 Vet. App. 124 (2002).

⁵⁴ *Id.* at 128.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Cohen v. Brown*, 10 Vet. App. 128, 146 (1997) (citing 57 Fed. Reg. 34,536 (Aug. 5, 1992)).

involvement in a plane crash, car crash, ship wreck, explosion, rape or assault, witnessing a death, or duty on a burn ward or graves registration unit.⁵⁸ The non-combat stressor may be experienced alone or with a group of people and is not limited to just one single episode. Further, credible supporting evidence of a non-combat stressor does not necessarily demand the submission of official documentary evidence.⁵⁹ In addition, in personal trauma cases (including in-service sexual assault), alternative sources may be used to verify the stressful event, to include documents from rape crisis centers, counselors, health clinics, civilian police reports, medical records immediately following the incident, chaplain or clergy, and/or diaries or journals.⁶⁰

III. THE STRESSOR VERIFICATION PROCESS

In relation to service connection claims for PTSD, VA must assist a veteran by attempting to verify a claimed in-service stressor or unverified claimed combat service, and, as noted above, the veteran “must provide information sufficient for the records custodian to conduct a search of the corroborative records.”⁶¹ Although the applicable statute and regulation do not appear to provide a particular level of specificity needed to trigger VA’s duty to make reasonable efforts to secure such records,⁶² it is VA’s

⁵⁸ M21-1MR, PART IV, SUBPART II, CH. 1, ¶ D.13.h. (2008)

⁵⁹ *Id.* ¶ D.14.d. It should be noted that if, after making reasonable efforts, VA is unable to secure relevant records relating a veteran’s claim, the law requires the Secretary to notify the veteran-claimant to this effect. 38 U.S.C. § 5103A(b)(2); 38 C.F.R. § 3.159(e). In particular, VA must identify the records that VA cannot obtain; briefly explain the efforts that VA made to obtain said records; and describe any further action to be taken by VA with respect to the claim. 38 C.F.R. § 3.159(e). Where the “VA is unable to locate a claimant’s records [due to the records being lost or destroyed], it should advise him to submit alternative forms of evidence to support his claim and should assist him in obtaining sufficient evidence from alternative sources.” *Daye v. Nicholson*, 20 Vet. App. 512, 516 (2006) (citing *Washington v. Nicholson*, 19 Vet. App. 362, 370 (2005)). Such alternative sources include: buddy statements, unit histories or other documents located at the United States Armed Services Center for Research of Unit Records, or similar official records depositories. *Daye*, 20 Vet. App. at 516.

⁶⁰ M21-1MR, *supra* note 58, ¶ D.17.g.

⁶¹ 38 C.F.R. § 3.159(c)(2)(i).

⁶² *Id.*; accord 38 U.S.C. § 5103A (2000); see also *Hyatt v. Nicholson*, 21 Vet. App. 390, 393-94 (2007), *withdrawn sub nom.* *Hyatt v. Peake*, 22 Vet. App. 211 (2008) (noting that “records of relevant VA-provided or VA-paid-for medical treatment and other relevant records pertaining to a claimant’s service and maintained by a governmental entity must be obtained [by VA] *only if* the claimant provides sufficient information to the Secretary to enable him to locate those records.”) (emphasis added).

practice not to attempt to verify stressors that are too vague,⁶³ and some stressors simply cannot be verified, such as events that almost happened, events involving civilians, mistreatment of enemy prisoners, or sniper attacks.⁶⁴ VA is required, however, to give the veteran an opportunity to provide verifiable information so that VA can conduct a meaningful records search.⁶⁵

In this regard, the VA Adjudication Procedure Manual M21-1 (M21-1) outlines the information that the U.S. Army & Joint Services Records Research Center (JSRRC)⁶⁶ requires in order to conduct a meaningful search.⁶⁷ Specifically, M21-1MR, Part IV, subpart ii, Ch. 1, ¶ D.15.c. requires at a minimum: the veteran's full name and social security number; a description of the claimed stressor(s); the month and year when the stressful event occurred (JSRRC will research records dated 30 days before the date provided and 30 days after); the units of assignment (battalion or company level) at the time of the stressful events; and geographic location.⁶⁸ If the veteran does not provide the minimum details as listed above, then VA will not request that the JSRRC conduct a records search for corroboration of the veteran's in-service, non-combat stressor.⁶⁹ The JSRRC is VA's research authority, and it has

⁶³ M21-1MR, *supra* note 58, ¶ D.14.d.; *see also* Fossie v. West, 12 Vet. App. 1, 6 (1998) (affirming Board's and RO's decisions not to refer claim to the United States Army and Joint Service Environmental Studies Group (ESG) because veteran's statements were too vague).

⁶⁴ THE U.S. ARMY & JOINT SERVICES RECORDS RESEARCH CENTER STRESSOR VERIFICATION GUIDE, C&P SERVICE TRAINING AND DATA MANAGEMENT STAFF, SECTION V (last updated Oct. 2006) [hereinafter JSRCC Stressor Verification Guide] (stating "if additional information/evidence regarding the alleged stressor is required from the veteran, request it using the MAP-D [modern awards processing-development] letter.").

⁶⁵ *Id.*; *see also* M21-1MR, *supra* note 58, ¶ 1.D.16, Presentation Department of Veterans Affairs JSRRC (June 28, 2007) [hereinafter JSRRC presentation] (indicating VA must submit an unavailability memorandum, which makes a formal finding of a lack of information required to corroborate a stressor(s) associated with the claim. The finding must also list the efforts made in order to obtain the information necessary to corroborate the veteran's stressful events).

⁶⁶ The JSRRC was formerly known as the U.S. Armed Services Center for Unit Record Research (CURR) as well as the Research of Unit Records, Environmental Support Group (ESG).

⁶⁷ M21-1MR, *supra* note 58, D.15.c

⁶⁸ *Id.*

⁶⁹ *See generally* Gobber v. Derwinski, 2 Vet. App. 470, 472 (1992) (stating that "[VA's] 'duty to assist' is not a license for a 'fishing expedition' to determine if there *might be some unspecified* information which could possibly support a claim.") (While this case was decided prior to the passage of the VCAA, it still remains good law).

the duty to research details of stressful events for verification of stressors for PTSD claims and exposure to Agent Orange.⁷⁰ VA's regional offices (ROs) have the authority to deny a claim for service connection for PTSD without requesting corroboration of an in-service stressor from an official records custodian, such as the JSRRC, the Marine Corps Archives and Special Collections (MCASC), or the National Archives and Records Administration (NARA), if the veteran fails to provide the minimum information required to conduct research, so long as the JSRRC coordinator has taken the actions described in the M21-1.⁷¹

If the veteran provides sufficient detail, then VA will submit a referral to the JSRRC to conduct a records search in order to verify the in-service stressor. The requests are sent through VA's Personnel Information Exchange System (PIES) using codes.⁷² Once the request is submitted through PIES, there is an interface process from the Defense Personnel Records Retrieval Information System (DPRIS) to the Army Records Information Management System (ARIMS), and then it is sent through to the JSRRC electronically where it is logged into a letter tracking system.⁷³ The claims are then assigned to Action Officers at the JSRRC for research. Once the Action Officer has completed the necessary research, a response is sent electronically from the JSRRC to ARIMS through DPRIS and the response is posted in PIES for VA to review.⁷⁴ The JSRRC does not evaluate the evidence, render opinions, make conclusions, or decide the merits of the claim, but instead provides the regional offices with a summary of its findings.⁷⁵

The JSRRC researches the Army, Navy, Air Force, and Coast Guard records containing historical information on individual units within these branches of service, as well as some personnel records, as they relate to the stressful events described by the veteran.⁷⁶ The JSRRC does not research Marine Corps.⁷⁷ The only exception is for Marines who served

⁷⁰ JSRRC Presentation, *supra* note 65.

⁷¹ M21-1MR, PART IV, *supra* note 58, ¶ D.15.k.

⁷² JSRRC Presentation, *supra* note 65.

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ JSRRC Stressor Verification Guide, *supra* note 64, at Section II.

⁷⁶ *Id.*

⁷⁷ *Id.* at Section IV.

on Navy ships.⁷⁸ A Marine Corps records search is conducted through the Marine Corps Archives and Special Collections (MCASC) and the National Archives and Records Administration (NARA).⁷⁹ MCASC maintains custodianship of the records and is the ultimate authority on their content and organization.⁸⁰ The MCASC requests the following information to conduct its searches: the veteran's name and VA file number; the name of the veteran's squadron/battalion (or higher echelon); the date (month and year) that the stressful event occurred (not to exceed a 60-day period); a concise description of the stressful event; identification of the unit records reviewed through Virtual VA; the mailing address of the requesting RO; and a point of contact at the RO.⁸¹

With regard to the Army, the JSRRC researches daily journals, operational reports, unit and organizational histories, and casualty records.⁸² The daily journals log a unit's daily activities, including names, locations, and specific incidents and operations.⁸³ The records are voluminous, and the JSRRC requests a date span of seven days or less.⁸⁴ Operational reports are quarterly reports documenting a unit's major operations and activities, particularly unit locations, strengths, operations, results of operations, casualties, statistical reports, and recommendations for improvement.⁸⁵ Unit and organizational histories describe the general activities of Army units for a particular period of time (normally six months or one year).⁸⁶ Morning reports contain a daily accounting of personnel actions at the company level.⁸⁷ Specifically, they list the transfer, arrival, and departure of individual service members.⁸⁸ They also contain the name and status of service members wounded in action, killed in action, and missing in action.⁸⁹

⁷⁸ JSRRC Presentation, *supra* note 65.

⁷⁹ M21-1MR, PART IV, *supra* note 58, ¶ D.13.i.⁷⁰ JSRRC Presentation, *supra* note 65.

⁸⁰ *Id.* at ¶ D.15.e.

⁸¹ *Id.* at ¶ D.15.h.

⁸² JSRRC Stressor Verification Guide, *supra* note 64, at Section III.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.* However, the Army ceased using morning reports in 1974.

The casualty records contain information of casualty, location, type of attack, cause and type of injury, and possible prognosis.⁹⁰ Records also contain the service member's unit, rank, MOS, date of death, date of report, name of the individual making the report, witnesses, and place of treatment. Service numbers and social security numbers may be required in order to identify the correct individual.⁹¹

With regard to the Air Force, the JSRRC researches the quarterly historical reports and other records.⁹² The quarterly historical reports are divided into functional areas such as supply, aircraft maintenance, civil engineering, and personnel.⁹³ Major units maintain these records, and the information maintained is not effective in verifying specific stressful events, which is why veterans must provide detailed descriptions of their claimed stressors.⁹⁴ The Air Force Military Personnel Center and the Randolph Air Force Base maintained the casualty information.⁹⁵

The Navy maintains deck logs/ship histories, Navy shore station histories and ship histories, muster rolls, and other records.⁹⁶ Deck logs record unusual or significant enemy action.⁹⁷ The officer of the deck records information at a minimum of once each four hours.⁹⁸ Navy shore station histories and ship histories are a compilation of significant events for the year.⁹⁹ Muster rolls are records of assignment of individuals to and from ships and stations.¹⁰⁰ The Navy Military Personnel Command also maintains a centralized listing of all Navy combat casualties.¹⁰¹ Other records maintained by the Navy include war diaries.¹⁰²

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.* The Air Force has not maintained morning reports since 1964, nor does it publish combat after action reports, daily journals, situation reports or operations reports—lessons learned.

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.* The Navy does not publish combat after action reports, daily journals, and situation reports of operations reports—lessons learned.

It is important to note that unit records and official military personnel files are not maintained at the JSRRC, and although the JSRRC maintains some morning reports, the main source for requesting morning reports is the National Personnel Records Center (NPRC).¹⁰³ Also, hazard pay records can be obtained only from the Department of Defense Finance and Accounting Service (DFAS).¹⁰⁴

The JSRRC requires the regional offices to identify the brigade in which the veteran served at the time the stressful event occurred (identification of the unit and company is preferred), and a description of the stressful event should include the Who, What, When, and Where.¹⁰⁵ If the veteran cannot supply an actual date, then he or she is asked to provide at least the month and year, and the JSRRC only researches records spanning a period of up to 60 days.¹⁰⁶ If a casualty is involved, the JSRRC requires the full name and unit of the casualty.¹⁰⁷ It cannot determine whether or not a veteran handled casualties or was involved in graves registration, but only whether or not a unit had casualties and was involved in graves registration.¹⁰⁸ Generally, documents written or recorded by the lowest possible unit in the chain of command are the most probative source of information to verify a claimed stressor because they tend to include more details with greater precision.¹⁰⁹

The JSRRC does not search through records in an attempt to identify an in-service stressor, but rather to verify the stressor.¹¹⁰ It also does not try to determine who the veteran knew or what the veteran personally witnessed or experienced or obtain statements from former commanders, supervisors, family, or friends. The JSRRC further will not provide general historical documentation or copies of records without specific incident.¹¹¹

¹⁰³ JSRRC Stressor Verification Guide, *supra* note 64, at Appendix A.

¹⁰⁴ Training Letter 07-02, Resources for Research of Posttraumatic Stress Disorder (PTSD) Stressors, dated Mar. 7, 2007 [hereinafter Training Letter 07-02].

¹⁰⁵ JSRRC Stressor Verification Guide, *supra* note 64, at Section V.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.* at Appendix C.

¹⁰⁹ M21-1MR, *supra* note 58, ¶ D.13.i.

¹¹⁰ JSRRC Stressor Verification Guide, *supra* note 64, at Appendix A.

¹¹¹ *Id.*

Some difficulties with JSRRC record searches include the fact that not every event that occurs during the course of an individual's service is recorded, and service records do not typically chronicle the specific experiences of individual service members.¹¹² Most of the records the JSRRC researches are not stored electronically and must be searched manually.¹¹³ Moreover, few records are arranged by subject.¹¹⁴ Also, there is no master index of subjects or names, and military records are often incomplete.¹¹⁵ Additionally, military records are organized first by unit designations, then by date, and many of the records are voluminous, which explains why the JSRRC requires that the veteran provide, at a maximum, a 60-day time period in which the claimed stressors occurred.¹¹⁶

Naturally, the JSRRC's resources are limited, and it has about 13 full-time employees with a "steady" backlog of 4,000 requests for personnel files.¹¹⁷ To reduce processing time, regional offices are being encouraged to use various sources to corroborate the in-service event locally without the need to refer the claim to the JSRRC.¹¹⁸ Some regional offices rely on subject matter experts to research stressors rather than submitting a stressor verification request to the JSRRC.¹¹⁹ Other regional offices do not have such expertise in-house and therefore must utilize the JSRRC for nearly all of their stressor verification requests.¹²⁰

¹¹² *Id.* at Section III.

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ See Rick Maze, *Marine Corps Community for USMC Veterans, Marine Corps Forum, Veterans Affairs (VA), GAO: Better Access to Records Would Speed VA Claims*, Dec. 20, 2006, <http://www.leatherneck.com/forums/showthread.php?t=38772> [hereinafter Rick Maze letter] (citing Robert E. Robertson, *Veterans' Disability Benefits: VA Can Improve its Procedures for Obtaining Military Service Records*, Government Accountability Office, Report No. 07-98 (Dec. 2006)); see also OFO Letter 20F-03-06 to Director VBA Regional Offices and Centers, Centralized Support for the Center for Unit Records Research (CURR) Coordinators, Jan. 14, 2003.

¹¹⁸ See Training Letter 07-02, *supra* note 104.

¹¹⁹ *Id.*

¹²⁰ *Id.*

IV. PROPOSED COURSE OF ACTION FOR STRESSOR VERIFICATION PROCESS

Additional burdens should not be placed at the already over-taxed regional office level to improve its procedures for obtaining military service records for claims involving PTSD. The current stressor verification process has no safeguards to ensure consistency or uniformity regarding stressor verification, and veterans' disability benefits claims for PTSD could be processed faster if VA had better access to military records and if consistency of data recording among the military branches existed. For example, processing PTSD claims for Army, Air Force, Navy, and Coast Guard veterans currently can take up to a year longer than for Marine veterans because the Marine Corps has adopted an electronic database cataloging system of those who have served in combat.¹²¹ When regional offices cannot find evidence of combat service in service records, they must turn to historical records. While the Marine Corps electronic library can be searched right away, VA must request that the records of veterans of other service branches be manually searched and photocopied.

VA and the Department of Defense should establish a comprehensive, electronic data cataloging system, wherein the record-keeping among the various military branches is uniform. Common military events and claimed stressors should be assigned codes, allowing the regional office to request verification via such codes.

A requirement that all branches adopt not only a similar but a compatible database would promote accuracy and efficiency. The ultimate goal would be to allow the JSRRC to merge the databases into a searchable, electronic source record. The power of this simple system would be greatly amplified by the addition of a numerical codification of general military actions or known PTSD stressors. Coding broad, common events would keep the system from becoming overburdened with detail available in other records and would also allow the data to be sourced from various levels. With little additional burden to company, platoon, or section leaders, daily reports of a few codes could indicate the unit's actions for the previous day.

¹²¹ Rick Maze letter, *supra* note 117 (citing Robert E. Robertson, *Veterans' Disability Benefits: VA Can Improve its Procedures for Obtaining Military Service Records*, Government Accountability Office, Report No. 07-98 (Dec. 2006)).

This tool would be most powerful if kept simple. The key is for the system to provide just enough information to be useful for the JSRRC and regional offices. General categories could include codes such as: “00” for no action; “01” for combat action; “11” for action from air; “12” for action from sea; “13” for action from land; “21” for projectiles; “22” for explosives; and “23” for mines, and so forth. An example of the employment of this system by an infantry platoon would read as follows:

Date	Code(s)	Description
01012009	00	Jan. 1, 2009; no combat
02012009	01, 13, 21, 22	Jan. 2, 2009; combat, ground unit; rifle mortar; rocket fire
03012009	01, 23	Jan. 3, 2009; combat, encountered mine field
04012009	01, 11, 22	Jan. 4, 2009; combat, aircraft attacked base w/ rockets

This system would also require all military branches to include combat action as a standard portion of record keeping.

This simple system would allow all units to report to higher-level units with brief information useful not only to VA, but also to the commanding officers in the immediate time frame. It would also allow traditional non-combat units to keep track of any enemy action. This is of vital importance in today’s more fluid combat environment, as evidenced by the experiences in Iraq and Afghanistan.

Non-combat related events, such as graves registration, disaster relief efforts, explosions (non-combat), police incidents involving personal trauma, natural disasters (fire, flood, volcanic eruption, etc.) could all be coded. The proposed codification, if included in a mandatory electronic database for each of the respective services in a common format, could be readily accessed by the JSRRC or the regional offices. As the implementation of this system reaches completion, the backlog potential for any future PTSD claims will be significantly reduced, as the claims with stressors that could readily be verified could be decided immediately. It would also serve as an index to direct

further document searches and lighten the burden of broad search date parameters.

Additionally, such a system would better and more fully satisfy VA's duty to assist all veterans in the development of their claims under the VCAA. In particular, the current stressor verification process as it stands likely allows valid service connection claims for PTSD to fall through the cracks, simply because of the sheer disunity and lack of uniformity in records keeping and searching methods. Under the VCAA, while the burdens of the development of a claim and the verification of PTSD stressors (or combat service) do not fall solely on VA, VA does have a unique statutory obligation to maximize the veteran's ability to establish his or her claim by assisting in the claim's development. In this way, and in keeping with the spirit and underlying purpose of the VCAA as enunciated by Congress and as interpreted by the CAVC, VA should request that all of the military branches adopt this new and updated method of tracking and verifying in-service stressors or unconfirmed combat service. That is, VA should consider that its statutory duty to assist includes the obligation to seek to organize service records in such a manner as to render searching techniques more efficient and to maximize the ability to verify in-service stressors and combat service.

CONCLUSION

The current stressor verification process lacks the efficiency and uniformity needed to ensure that all veteran-claimants receive the best possible chance of establishing service connection for PTSD. As the landscape of military engagements and wars has changed in recent years, as reflected by the Iraq War and the war in Afghanistan, so too must the methods employed by VA to meet its statutory obligation to assist veterans with their PTSD claims. By better fulfilling its VCAA duties to assist through the military's implementation of a more centralized system of data collection and records tracking, VA will better aid our nation's veterans in securing the benefits to which they are entitled.