



VETERANS OF FOREIGN WARS OF THE UNITED STATES

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February 13, 2017

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Veterans Benefits Administration (20M33)
Department of Veterans Affairs
810 Vermont Ave NW
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SUBJ: OMB Control No. 2900-0659: Support of Claim for Service Connection for Post-Traumatic Stress Disorder and Post-Traumatic Stress Disorder Secondary to Personal Assault

This submission presents the comments of the Veterans of Foreign Wars of the United States to the proposed revision of VA Form 21-0781 and VA Form 21-0781a, published in the Federal Register on December 15, 2016.

The forms under revision, VA Form 21-0781 and 21-0781a, are self-reports by veterans who are claiming benefits for post-traumatic stress disorder (PTSD) caused by stressful events during their military service. The form asks for details about the stressful events so that VA can confirm the events and seek a medical opinion as to whether those events led to the development of PTSD.

The VFW represents service members (who have less than six months remaining of active duty) and veterans in more than 100,000 disability claims and 15,000 appeals before the Department of Veterans Affairs each year. In representing veterans throughout this process, the VFW has identified suggested changes to the forms that would facilitate timely research into official records documenting the veteran's stressful experiences, and better align with VA's legal duty to assist in developing claims for PTSD.

VA Form 21-0781 should specifically include the Social Security number in item 2

VA Form 21-0781 should request the veteran's SSN instead of the VA file number since that is the claim number for most veterans and is more easily associated with a veteran's record in the Veterans Benefits Management System (VBMS). Unfortunately, the VFW has seen incidents where a veteran has faxed in a form without his or her Social Security number, an invalid phone number, and VA was unable to match the veteran's name to a specific claim file. Although many statements in support of a claim for PTSD will be submitted with other claims forms, these forms may become dis-associated with the claim package during the scanning process. Requesting the veteran's SSN will facilitate quicker processing and ensure that the form is considered with all evidence in deciding the veteran's claim.

NO ONE DOES MORE FOR VETERANS.

VA Form 21-0781 should include an option for the veteran to supply tailored information if the stressor occurred during Special Operations

Sometimes, the stressor that the veteran experiences occurred during Special Operations or “black ops” missions, in which the veteran cannot supply all the information about the incident requested on VA Form 21-0781. VA should offer a field directly under the veteran’s name and Social Security number, which would allow the veteran to fill out the information required by VA’s liaison at Special Operations Command (SOCOM) to research the event. From the VFW’s experience, this information includes MOS/Specialty, branch of service, rank, tour of duty dates attached or assigned to a Special Operations unit, and whether the operation or claimed incidents were classified. However, any requirements for inclusion in the form should be verified with SOCOM for accuracy.

VA Form 21-0781 instructions should specify that the form is not required if the alleged stressor is combat related and the individual received a combat award

Title 38 CFR 3.304(f)(2) eases the burden on verifying stressors caused by participation in combat operations by allowing VA to concede the stressor occurred during combat by the veteran’s lay testimony if it is consistent with the circumstances of the veteran’s service. VA’s Adjudication Procedures Manual (M21-1) specifies that if the veteran received an individual combat award (also termed medal of valor), this award is sufficient to verify the stressor as long as the claimed combat stressor is identified by a psychiatrist or psychologist as the cause of the veteran’s PTSD. The receipt of an individual combat award eliminates the requirement for completing VA form 21-0781. Therefore, to reduce the burden on the veteran and unnecessary development and processing time by VA, a note should be placed in the instructions for VA form 21-0781 that states if the veteran received an individual combat award (listing those that apply) the veteran does not need to complete the form.

An alternative procedure would be to allow veterans to complete only a small portion of VA Form 21-0781 if their claimed stressor is due to combat. An additional section could be added after the veteran’s identifying information: the first question would be whether the veteran believes his or her diagnosed PTSD is related to an incident during combat, and the second question would be whether the veteran received an individual combat award (listing the awards). If both of these questions are answered in the affirmative, then the rest of the form can be skipped. Instructions should be provided on both the paper and electronic versions of VA Form 21-0781. VA may wish to provide similar options for veterans with PTSD diagnosed in service.

VA Form 21-0781 should include civilians in blocks 7-9 and eliminate or change blocks 7D and 8D as the items request information that is too narrow in focus

In many incidents, American or foreign nationals killed or injured in stressful incidents are not service members. Yet, if the veteran remembered their names, records may be able to be found in Department of Defense or Department of Homeland Security criminal investigation records or press articles. Therefore, the title “information about servicepersons who were killed or injured during

incident” should be changed to “information about persons who were killed or injured during incident.” A block for identifying service members involved would still be useful, but should allow free text to identify more than two service members.

Additionally, the blocks under this section which require the veteran to mark whether the service member was killed in action, wounded in action, killed non-battle, or injured non-battle, is not useful unless the veteran actually has official records of the incident, in which case VA would not have to research it. These determinations are made by the chain of command, not an observer to the incident, so they do not have much relevance to a self-report form. A better question would be whether the veteran has documentation of the incident already, and whether it was a death or injury. The circumstances of the death or injury as observed by the veteran will already be listed in the description of the incident section.

Both VA Form 21-0781 and VA Form 21-0781a should include blocks for entering the timeframe of the incident, to align with VA’s requirements under the duty to assist

When updating VA Form 21-0781 and VA Form 21-0781a, VA should take into account a recent judicial determination regarding the timeframe veterans must provide in order for VA to verify stressful incidents that led to PTSD. In October 2015, the Court of Appeals for Veterans Claims considered whether the process that VA uses to research stressors with the Joint Services Records Research Center (JSRRC – formerly Center for Unit Records Research) aligned with VA’s duty to assist the veteran in the development of his or her claim. The court found in *Gagne v. McDonald*, 27 Vet.App. 397 (2015) that while the procedure of searching within certain windows of time was acceptable, it was unreasonable to require that the veteran narrow a stressor to only a specific 60-day time period. If a veteran provides information sufficient to locate records, the duty to assist in 38 USC § 5103A and 38 CFR § 3.159 requires VA to make as many requests as are necessary to obtain records. The search ends only when such a search would become futile: “When it becomes clear the record does not exist or is not in possession of the custodian.”

If VA must make multiple requests for records, it should not have to ask the veteran to fill out multiple copies of VA form 21-0781 or 21-0781a. The forms should request the veteran to specify the most likely 60-day period, but then also the window in which the incident occurred. For example, if the veteran served a one-year tour of duty in Vietnam and believed that the event happened around Thanksgiving, the most likely period could be November 1 through December 31, but if not found during that time period, VA could ask JSRRC to search other records during the time frame the veteran was deployed. The court signaled that the time window could not be completely open-ended, such as to include the entire span of a retiree’s 30-year military career, but the times, places, and circumstances should be able to narrow down the timeframe of the event.

Additionally, the requested timeframe should take into account the multiple deployments that current service members face. So instead of a continuous period, it is possible that a member of the National Guard or Reserve was called up to go to Iraq twice, in 2003 and 2008. This possibility should be easy to mark on VA Form 21-0781: for example, if the veteran remembered the incident

happened around his birthday, VA should be able to search records for a 60-day period in 2003, and if not verified, another 60-day period in 2008.

Furthermore, it is a symptom of trauma to be unable to remember certain details of events. As advocates, we interview the veteran to determine the likely dates of occurrence of stressors, asking questions such as what was the weather like, or had the veteran recently been promoted at the time of the event. However, the veteran should not be penalized for confusing dates if JSRRC is ultimately able to research the event and find that it did occur while the veteran was present at the location. Unfortunately, the VFW has seen claims denied when a veteran stated that an event happened 60 days out from when it actually occurred. While the process of adjudicating evidence seems beyond the scope of the form, it is a fact that if the veteran is required to place an exact timeframe on the form, and cannot sit down with the rating personnel to explain that is their best guess, the veteran's credibility may be strained. To summarize, the timeframe of the incident requested on both VA Form 21-0781 and 21-0781a must incorporate multiple timeframes, and allow a free text area for explanation.

Both VA Form 21-0781 and 21-0781a should allow for foreign telephone numbers

VFW has noticed that the new revisions of claim forms which ask for veterans to fill in blocks do not include blocks for foreign telephone numbers (such as on VA Form 21-0966 and VA Form 21-526EZ). If a similar change is made to require blocks for telephone numbers, VA Forms 21-0781 and 21-0781a (as well as all others) should include an option for entering a foreign telephone number and country code. This would ensure all veterans have equal access to clarification of information from VA claims processing personnel.

VA Form 21-0781a should include information blocks on other persons involved in the incident

Personal assaults may involve multiple victims, such as in "hazing" incidents. Additionally, alleged assailants may have been subject to punishment under the UCMJ or civilian authority for the reported incident, where official records would exist. Since veterans currently may report servicepersons involved in a stressful incident on VA Form 21-0781, this information should also be more clearly delineated on VA Form 21-0781a. Such a change would more easily identify relevant records.

VA Form 21-0781a should clarify which records VA will obtain and which records the claimant must submit, and include information on how to obtain records, by modifying items 4 and 6

Items 4 and 6 (which are identical) of VA Form 21-0781a should be modified to clarify the responsibilities of the claimant and VA with regard to obtaining records. It is unclear whether VA will contact private persons with addresses listed on the form, or only institutions and government-held records. It should be made clear how many attempts VA will make to obtain information on the claim from these sources, and the ultimate responsibility of the service member or veteran to

submit private testimony or state-held records. Personal assault is an injury, which makes assault occurring during periods of active duty for training and inactive duty for training, as well as Active Guard Reserve (AGR) status in Reserve or National Guard units pertinent to a claim for service connection. VA does not have the ease of communication with non-federal units and state law enforcement agencies as it does with federal entities.

Items 4 and 6 should also contain a box for the service member or veteran to indicate that an assault was reported to the Sexual Assault Prevention and Response Office (SAPRO). A link should be provided for the service member or veteran to request records from the SAPRO, if a report was filed during military service. Additionally, the address blocks should allow for input of a military installation name or an address.

VA Form 21-0781a should more clearly instruct veterans regarding which additional sources of information may apply to their claim by modifying item 7

VA Form 21-0781a differs from VA Form 21-0781 in that additional sources of information outside official service records may be used to demonstrate “markers” of behavior changes after the incident that can cumulatively support a finding of a personal assault during military service. When representing clients with PTSD related to personal assault, we often give the form to the service member or veteran to complete at home because of the difficult memories it brings up. The form’s burden time is listed at 70 minutes, which cannot be completed during a standard office interview. Often, the service member or veteran circles or highlights the markers of behavioral change in Item 7 that apply to his or her claim. This is helpful, because identifying issues from blocks of text is more taxing on the VA claim developer than bulleted items with space to offer a description. Disability benefit questionnaires, for example, use the list-explanation approach in order to more easily match up veterans’ symptoms with the rating schedule.

Item 7 should include checkboxes instead of bullets, and include an “other” option with room for limited free text. The free text portion should instruct the veteran to describe other sources of information and attach any documentation that the veteran has in his or her possession.

Modified the way we suggest, VA Forms 21-0781 and 21-0781a which support veterans’ claims for service connection for PTSD will assist VA and the veteran in better identifying relevant information and researching records. Ultimately, this will lead to more accurate claims adjudication and provision of health care and treatment for veterans. We appreciate the opportunity to comment on the proposed information collection.

Sincerely,

A handwritten signature in black ink, appearing to read "Gerald T. Manar", with a long horizontal line extending to the right.

GERALD T. MANAR

Director, National Veterans Service